

TEXTBOOKS

FIQH

- ACCORDING TO SHAFII SCHOOL OF LAW -

2

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



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FIQH

- II -

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FIQH -II-

(ACCORDING TO THE SHAFII SCHOOL OF ISLAMIC LAW)

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CHAPTER 1

METHODOLOGY OF ISLAMIC JURISPRUDENCE AND IJTIHAD

CONTENTS

- A. DEFINITION AND EMERGENCE OF USUL AL-FIQH
- B. METHODS FOLLOWED IN USUL AL-FIQH
- C. THE SUBJECT, AIM, AND BENEFITS OF USUL AL-FIQH
- D. THE ESSENCE AND NECESSITY OF IJTIHAD
- E. TAQLID AND TAASSUB (IMITATION AND BIGOTRY)



PREPARATORY WORKS

1. Research the role of Usul al-Fiqh in understanding religious rulings.
2. How did the science of usul al-fiqh emerge? Analyze the relationship between Usul al-Fiqh and Fiqh.
3. When you come across a religious issue, what steps do you take in order to solve it? To whom and to which institution do you consult? Think about it.
4. Do we have to follow a particular School of Islamic Law (Madhhab)? Discuss.

A. DEFINITION AND EMERGENCE OF USUL AL-FIQH

The term usul al-fiqh is defined in the sources as follows:

أُصُولُ الْفِقْهِ: هِيَ الْقَوَاعِدُ الَّتِي يَتَوَصَّلُ بِهَا الْمُجْتَهِدُ إِلَى الْإِسْتِنْبَاطِ الْأَحْكَامِ الشَّرْعِيَّةِ الْعَمَلِيَّةِ مِنَ الْأَدَلَّةِ التَّفْصِيلِيَّةِ

Usul al-Fiqh is “The body of principles and investigative methodologies through which practical legal rules are developed from the foundational sources.”¹

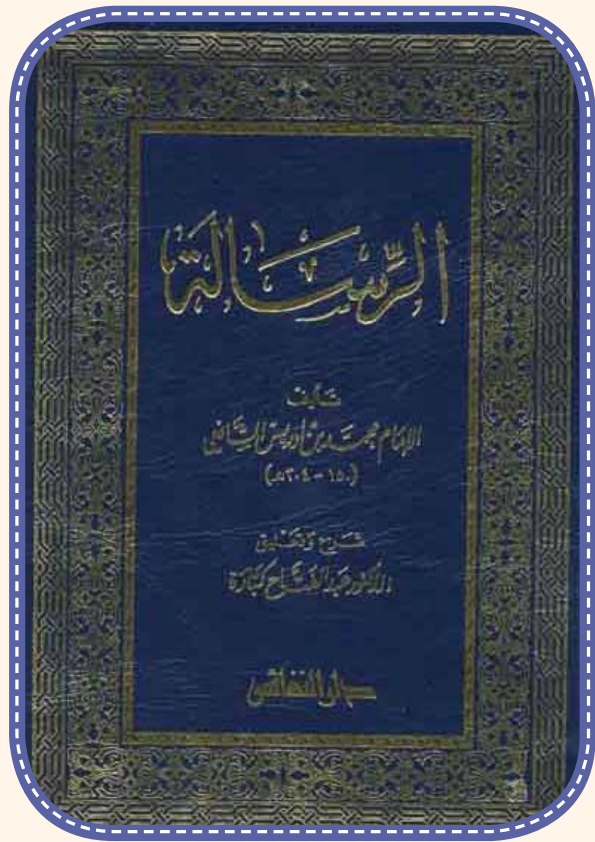
Usul al-Fiqh is the science of methodology of Islamic jurisprudence which shows the independent jurist the methods and principles by means which he deduces the legal rulings such as recommended, prohibited, etc. from the detailed sources of law like the Holy Qur'an, Sunnah, consensus of Muslim jurists, and analogy. Usul al-Fiqh shows the foundations, principles, and sources of the science of fiqh.

The science of methodology of Islamic Jurisprudence was born at the end of second century of Hijrah.

During the time of the Messenger of Allah (pbuh), the rulings were established based on either the Holy Qur'an or the Sunnah of the Prophet (pbuh). After the Prophet (peace be upon him) passed away, the most prominent companions of the Prophet took on the task of issuing rulings and judgment regarding the problems of Muslim society. The Companions were people with unique ability of comprehension. They also lived together with the Prophet (pbuh) and were his friends for a long time. Because they practically applied the rulings of deducing rulings from the main sources of Islamic law, they did not need theoretical knowledge of such principles. They were very proficient in the Arabic language, which is the language of the Qur'an and Sunnah, and they knew the details and comprehended the purpose of every ruling.

When they were in need of a ruling regarding a topic, they would turn to the Qur'an, and when they could not find what they were looking for in the Qur'an, they would turn to the Sunnah of the Prophet, and when they could not find any solution in them, they would issue their personal judgement, in other words apply *ijtihad*.

The independent jurists (mujtahids) of the generation that followed the Companions of the Prophet (or the generation of Tabi'un) followed the same way. After the eras of the generation of the Companions



1 Şaban, *İslâm Hukuk İlminin Esasları (Usûlü'l-Fikh)*, p. 28; Atar, *Fıkıh Usûlü*, p. 3.

and that of Tabi'un had passed, new issues, which never had happened before, arose. Thus, mujtahids established the principles and methods to be used as the guidelines of issuing legal judgments in order to prevent the possibility of arbitrary judgments. The emergence of Usul al-Fiqh (the Methodology of Islamic Jurisprudence) as an independent branch of study took place towards the end of the second Hijri century. In this way, the books on the methodology of Islamic jurisprudence started to be compiled and the first one of such books was written by Imam Abu Yusuf, one of the prominent disciples of Imam Abu Hanifa. However, it did not survive to this day. The earliest books which have survived to this day is the book written by Imam Shafii titled "al-Risala". This is because Imam Shafii is known as the father of the science of Methodology of Islamic Jurisprudence.

B. METHODS FOLLOWED IN USUL AL-FIQH

There are three methods which come into prominence in the methodology of Islamic jurisprudence. Two of these methods followed by Shafii and Hanafi Schools. The jurists from these schools have written books regarding the methodological systems that they have followed.

a. The Method of Mutakallimun (Theologians) or Method of Shafiiyya: This is the method followed by Asha'ri scholars of Islamic theology as well as the jurists following Maliki, Hanbali, and particularly Shafii schools of Islamic law. In this method, the principles of methodology are established based on the proofs and the rulings against the proofs have been rejected.

Important books written by this method are as follows:

Imam Shafii (d. 204) "al-Risala"

Al-Ghazzali (d. 505) "al-Mustasfa"

Al-Amidi (d. 631) "al-Ihkam"

b. Method of Fuqaha (Jurists) or Method of Hanafiyya: It is the method followed by Hanafi jurists. It is a method. In this method, the methodological principles are based on legal practices and issued rulings. In a way, it is an inductive method.

Important books written by this method are as follows:

Al-Dabusi (d. 430) "Taqwim al-adilla"

Al-Pazdawi (d. 482) "al-Usul"

Al-Sarakhsi (d. 483) "al-Usul"

c. Mamzuj (Combining) Method: It is the method which combines the previous two methods. Important books written by this method are as follows:

Sadr al-Shari'a (d. 747) "at-Tankih wa al-Tawdih"

Molla Hüsrev (d. 885) "Mir'at"

Al-Shatibi (d. 780) "Muwafaqat"

C. THE SUBJECT, AIM, AND BENEFITS OF USUL AL-FIQH

I. The Subject and Goals of the Methodology of Islamic Jurisprudence

The Science the Methodology of Islamic Jurisprudence deals with four main subjects:

Mukallaf (Legally Responsible Person): Identifying those who are responsible of carrying out religious responsibilities and duties, the issues related to competency of mukallaf, and issues related to the impediments which remove competency.

Shar'i Rulings: The values attached to the obligations of a Mukallaf according to their categories: "fard (obligatory), wajib (necessary), mubah (permissible), makruh (disliked) and haram (forbidden)" and other issues associated with a ruling, i.e. Wad'i rulings.

Shar'i Proofs or Sources (Adilla al-Shar'iyyah): these are the proofs or sources such as the Holy Qur'an, Sunnah of the Prophet, consensus of Muslims jurists (ijma) and analogy from which the shar'i rulings are deducted.

Mujtahid: Those who have the authority and knowledge to deduct religious rulings from the sources of Islamic law.

The methodology of Islamic Law is a branch of Islamic science which provides us with necessary tools to reach the correct religious rulings. **The goal of the methodology of Islamic Law** is to show the methods and principles how to derive the rulings from the sources, and to help a Mujtahid not to make mistakes in his judgements with the help of the specified principles and guidelines of this science

II. The benefits of the Methodology of Islamic Jurisprudence

- The benefits of studying the methodology of Islamic Jurisprudence (usul al-Fiqh) are:
- It helps us understand the Qur'an and sayings of our Prophet (pbuh) in the most correct manner.
- It helps us better understand the legal rulings issued by Mujtahids.
- It helps us differentiate between various opinions of Muslim jurists and choose the one that sounds more credible.
- It shows which method to follow while answering the questions related to Islamic Law.
- It teaches the importance of independent judgment and makes us aware of how crucial it is

D. THE ESSENCE AND NECESSITY OF IJTIHAD

I. The Definition of Ijtihad

The word ijtihad literally refers to the energy, striving and putting in utmost effort and hard work in order to obtain something that is quite difficult to be achieved. In legal terminology, on the other hand it means **"A Muslim jurist's interpretation of the Qur'an and Sunnah in accordance with the specific guidelines and principles of the methodology of Islamic law, and his effort in finding out the correct religious rulings of the newly faced problems of Muslim society in order to live and know religion through the sources of Islamic law?"**

II. Encouragement for Ijtihad in the Qur'an and Sunnah

We can find verses in the Qur'an and sayings of the Prophet that encourage and in fact command Ijtihad. The following are examples:

LET US NOTE

The Prophet (pbuh) not only performed ijtihad himself but also opened the doors of ijtihad to his companions. For example, when he (pbuh) asked Muadh bin Jabal (r.a.), whom he (pbuh) sent to Yemen as a governor: *"If you came across a problem that you couldn't solve by using the Qur'an and Sunnah, what would you do?"* Muadh (r.a.) replied: *"If I do not find it in the Qur'an and Sunnah, I shall do my best to form an opinion and I shall spare no effort."* The Messenger of Allah was pleased with Muadh's response. (Abu Dawud, Aqdiya, 11; al-Tirmidhi, Ahkam, 3)

The Qur'an expresses that Muslims must consult each other when conducting their affairs (al-Shura, 42: 38).

The Prophet (pbuh) advised his companions to rule with their own judgment and thus his goal was to educate them. For example, one day two claimants came to the Prophet (pbuh). He turned to his companion Uqba (r.a.) who was among the most prominent companions and said to him, *"Settle their dispute!"* Uqba replied, *"O Messenger of Allah, how can I attempt to solve it while you are present!"* The Prophet then said, *"Settle it, If you do it correctly, you will receive ten rewards (from Allah), and if you err, you will receive one."*²

As can be seen, The Prophet (pbuh) not only gave permission to perform Ijtihad, but he also encouraged it. He firmly stated that the fear of making an error should not be an obstacle in the way of ijtihad.

III. The Necessity of Ijtihad

The command to the believers to follow Allah and His Messenger (pbuh) shows the necessity of making ijtihad based on the essence and teachings of the Qur'an and Sunnah.

The Qur'an and Sunnah, the two main sources of Islamic law, have not issued a ruling for every single problem that will arise until the Day of Judgment, which is not actually possible. The rulings in the Qur'an and Sunnah are limited while the incidents, issues, and circumstances are unlimited. Thus, Ijtihad is an important way of evaluating and analyzing the new problems and issuing the appropriate judgments for them.

A Muslim is obliged to spend every moment of his life within the boundaries specified by Allah and His Messenger. In order to fulfill this principle in the best manner, one needs to examine and revise the previously given judgments in accordance with the circumstances and conditions of the current era.

IV. Requirements to be a Mujtahid

Ijtihad can and should be carried out anytime and anywhere, but it should be done by abiding by its guidelines. The following are the qualities that are required to be found in a person who makes Ijtihad:

Knowledge of the Qur'an: A mujtahid must know the Qur'an well, He must know the entire Qur'an in terms of its meaning and interpretation, and be informed well about the verses that are related to legal matters. Additionally, the mujtahid must also know the reasons of revelation for every verse; which chapters of the Qur'an were revealed in Mecca and which ones revealed in Medina; which verses were abrogating (al-nasikh) and which ones were abrogated (al-mansukh); and he must also have information about other issues such as muhkam (verse with clear meanings) and mutashabih (verses with obscure meanings).

Knowledge of the Sunnah: It is required for a mujtahid to know whether the ahadith (sayings of the Prophet) are sahih (authentic) or weak. He must also be knowledgeable about the chain of narration (isnad). He should be able to distinguish between the ahadith that are mutawatir (narrated through a group of narrators in all generations), mashhur (narrated by three or more narrators after the first generation) and ahad (narrations which do not have the above mentioned conditions). He should also know asbab al-wurud (the occasions in which the Prophet (pbuh) said or did that specific action) and the rules

² Al-Daraqutni, *Sunan*, vol. 4, p. 203; Ahmet ibn Hanbal, *Musnad*, vol. 4, p. 205

of preference between narrations. It is not enough to have knowledge only about ahadith related to legal matters, because other types of ahadith may also affect the ruling.

Knowledge about ijma' (Consensus of Muslim Jurists): A mujtahid must have knowledge about the rulings issued by the consensus of Muslim jurists and the ones upon which there is a disagreement.

Knowledge about the Fundamentals and Principles of Islamic Law: He needs to be well informed about the methodology of Islamic Law and process of issuing a judgment, and he must also know the application of qiyas (analogical deduction).

Competence in Arabic language: A mujtahid must know Arabic well enough to understand the texts (verses and sayings of the Prophet) and their contentions.

Knowledge regarding ideals of Islam: A mujtahid must be aware of the objects and ideals of Islam in order to avoid making an ijihad that contradicts with Islam.

Knowledge of Preference: A mujtahid must be acquainted with the hierarchic order of the sources that contradict with each other and how to choose between sources and solve such contradictions.

Knowledge about the issue that Ijtihad is being applied to: He must have thorough knowledge about the issue at hand, its related conditions and context, and have the necessary scientific knowledge related to it.

Competence/ Ability: A mujtahid must be smart and naturally skilled to carry out Ijtihad.

To live in accordance with the Principles of Islam: A mujtahid should also be a pious person and live in accordance with the principles of Islam. He must abide by Islamic rulings and avoid what is forbidden.



E. TAQLID AND TA'ASSUB (IMITATION AND BIGOTRY)

Taqlid means to follow or imitate someone else's view without having any knowledge about the strength and validity of the basis of his views. One who practices taqlid is called a **muqallid** (imitator).

Ta'assub can be defined as following a legal view without knowing or questioning its credibility; defending a view to be certain when in fact it is not; not admitting the fact that the views he follow may be refuted or contested. One who acts with ta'assub is referred to as a **mutaassib**.

Muslims who do not have the necessary qualities to perform Ijtihad themselves have to imitate (follow) a mujtahid, because a mukallaf (religiously responsible believers) must learn the rulings of Islam and put them into practice. However, we cannot expect every Muslim to be able to deduct the religious rulings from their sources and perform Ijtihad regarding legal matters. Given the fact that we are also in need of people who work in trade, agriculture and other areas, imitation in regards to legal matter has been disliked yet allowed for those who are not entitled to perform Ijtihad. The verses **"Allah has not imposed any**

difficulties on you (in religion)” (al-Hajj, 22: 78), and **“Ask the people of knowledge, if you know not?”** (al-Nahl, 16: 43) prove the credibility of the above statement.

A Muslim who follows a certain madhhab (school of Islamic law) and a mujtahid should also pay attention to the following principles:

A *muqallid* must avoid ta'assub (bigotry) in following a madhhabs.

Madhhabs are not religions, but they are interpretations of Islam which shed light on how to practice it. The fact that madhhabs present various opinions is not a drawback for Muslims, but on the contrary, it is richness for the believers.

We must have faith that mujtahids deserve merit whether they are absolutely correct or wrong in their judgment. It is our duty to admit their high status and value, to respect them, to be polite to them, and to make du'a (supplication) for their goodness.

If a Muslim is certain that his madhhab is not entirely correct regarding a given matter, he may follow another madhhab in that matter if he is sure that the other madhhab has a more accurate opinion.

Sunni Muslims living in various continents worldwide follow one of the four Sunni madhhabs. A Muslim chooses to follow one of the four madhhabs; performs his acts of worship and deeds according to the exposition of his chosen madhhab. There is no such obligation that a Muslim must stick to the very same madhhab in his entire life. For this reason, he who wishes to change from one madhhab to another may do so. For instance, a Muslim who adheres to the Shafii madhhab may choose to follow the Hanafi madhhab; likewise, another Muslim who follows the Hanafi madhhab is allowed to follow the Shafii madhhab if he wishes.

However, one who changes from a madhhab to another is obliged to learn the religious rulings in his newly chosen madhhab to be able to perform worship in the correct manner. For example, a person who shifts from Shafii to Hanbali should at least learn the compulsory acts of wudu (ablution), the things that invalidate one's wudu, the essential and required acts of ritual prayer (arkan al-salah). Otherwise, those who change their madhhab without learning at least the basic principles may make mistakes in performing their acts of worship.

Just as it is allowed to change from a madhhab to another in all matters, it is also allowed to follow a ruling from another madhhab when one's own madhhab does not provide an adequate answer or solution regarding that matter. This is permitted. However, it should be noted that the imitation cannot be arbitrary or based on one's desire. It is permitted only when there is a necessity to do so. One who imitates another madhhab must consider the following points:

Firstly, if one would like to imitate a practice of another madhhab, the condition is that he must have not already performed it (i.e. it must be the first time). For example, if a person who is a member of the Shafii madhhab touches his wife with his hand before he performs his prayer and remembers it after he has finished, and goes on to say: “That's fine, my wudu is still valid according to the Hanafi madhhab” and follows the Hanafi madhhab in this specific matter, his prayer is in fact not valid.

Secondly, it is not permissible for a muqallid (imitator) to choose and imitate what is simple and easy in every madhhab and mix them. This type of behavior can be considered an act of practicing things from various madhhabs at the same time that may contradict with each other, which is referred to as “**ta'fik**” and this type of imitation is not permitted.



Can a Muslim practice Islam in this era without adhering to a madhhab, just like the Companions of the Prophet (pbuh)? Discuss in class.

BOX OF WISDOM

To avoid blind imitation and bigotry we must take a look at the following statements of the mujtahid imams:

"It is not legit to issue a fatwa (religious opinion) based on one of our views without any knowledge and examination of its sources or basis, and where and under what circumstances we have reached that view." (Abu Hanifa)

"I am a human being. My judgments may be correct or incorrect. Therefore, investigate them. Accept every word of mine that is in accordance with Qur'an and Sunnah and leave the one that is not." (Imam Malik)

"One who seeks knowledge without knowing its basis is like someone who collects firewood in the dark. While carrying the pile of firewood that he has collected, he is unaware of the poisonous snake hidden in the pile." (Imam Shafii)

"Do not blindly follow me, neither Malik and Sawri nor Awzai. Take the information and evidence from their sources." (Ahmad b. Hanbal)

**EVALUATION ACTIVITIES**

1. Define and explain the methodology of Islamic Law.
2. How was the methodology of Islamic Law born? Explain.
3. What are the benefits of the methodology of Islamic Law? Write them down.
4. With which reply of Muadh b. Jabal was the Prophet (pbuh) pleased? Explain.
5. What are the qualifications required to be a Mujtahid? Write them down.
6. Give information about taqlid and ta'assub and research about the permissibility of imitating a madhhab.

**MATCH THE PAIRS**

1	Mujtahid		<i>Bigotry</i>
2	(Shar'i) Religious rulings		<i>Rulings issued by a mujtahid</i>
3	Taqlid		<i>Rulings such as Fard, Sunnah, Haram etc.</i>
4	Adilla al-Shar'iyyah	1	<i>One who is qualified to issue religious rulings</i>
5	Ta'assub		<i>Imitating exactly what someone else does</i>
6	Ijtihad		<i>Qur'an, sunnah, ijma, qiyas etc.</i>



MULTIPLE CHOICE QUESTIONS

1. Which of the following is the name of the first book written about the methodology of Islamic Law and its writer?
 - A) Imam Shatibi - al-Muwafaqat
 - B) Imam Zaid b. Ali- al-Majmu'
 - C) Imam Abu Hanifa- Fiqh al-Akbar
 - D) Imam Shafii - al-Risala
2. Which of the following is not from the contents and benefits of the methodology of Islamic Law?
 - A) Ensuring that Fiqh topics are understood more dearly
 - B) Showing the guidelines when giving a religious opinion
 - C) To teach the differences of opinion between schools of Islamic theology
 - D) To help us comprehend the importance of Ijtihad
3. Two claimants came to the Prophet (pbuh), so the Prophet told his companion Uqba (r.a.), "Be the judge and settle the issue between them." When Uqba replied, "How can I issue a judgment while you are present, O Messenger of Allah!" what was the Prophet's reply?
 - A) You are right. Nobody's judgment matters while I am present.
 - B) Be the judge, if you err, you will receive one reward, and if you are right, you will receive ten.
 - C) Tell your religious opinion. Obey me, do not disobey me!
 - D) Judging is a very delicate task, not everybody can do it.
4. Which of the following are not among the requirements to be a Mujahid?
 - A) Living a pious life
 - B) Having read tafsir books
 - C) Knowledge about the objects of Islam
 - D) Being naturally skilled
5. Which one of the following is not appropriate in terms of Fiqh?
 - A) Imitating another madhhab in times of necessity
 - B) Changing madhhabs
 - C) Combining or joining madhhabs
 - D) Practice based on a strong religious opinion (fatwa)

CHAPTER 2

SOURCES OF ISLAMIC LAW

CONTENTS

- A. GENERAL INFORMATION ABOUT THE SOURCES
- B. THE BOOK (THE HOLY QUR'AN)
- C. SUNNAH
- D. IJMA' (CONSENSUS OF MUSLIM JURISTS)
- E. QIYAS (ANALOGY)
- F. SECONDARY SOURCES



PREPARATORY WORKS

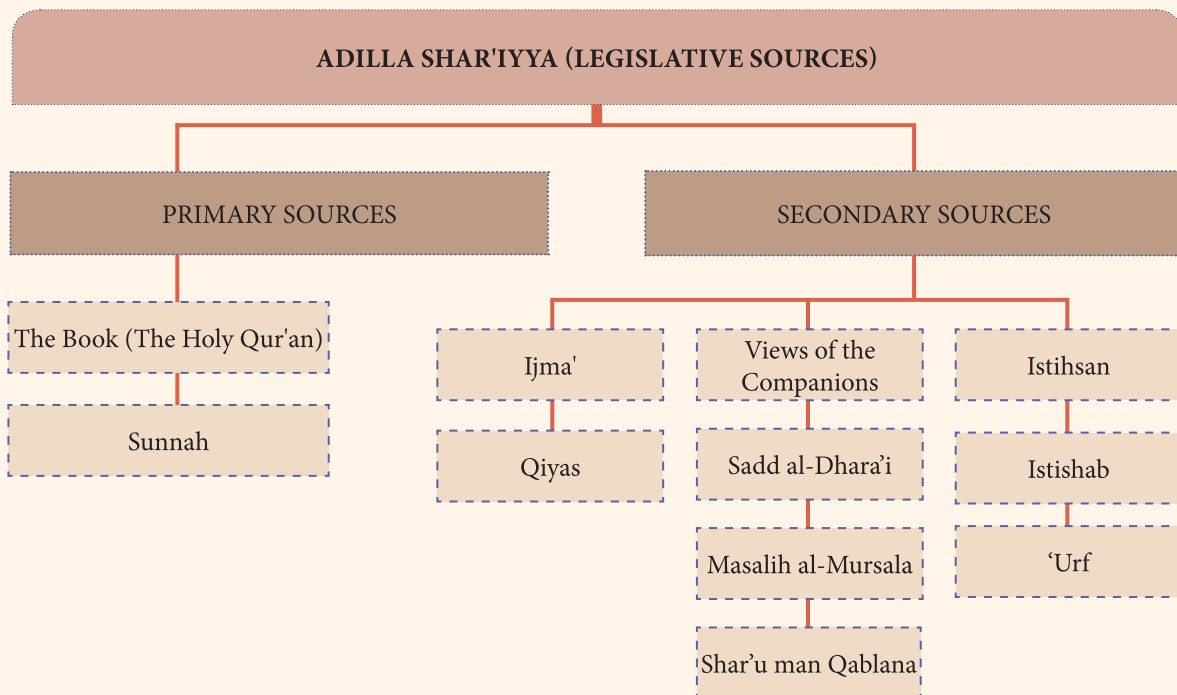
1. Where would you search the answers to your questions regarding religious matters?
2. Research the contents of the Qur'an and Sunnah with the help of what you have learned in tafsir and hadith classes.
3. Why have the four sources, i.e. the Qur'an, Sunnah, ijma, and Qiyas, come into prominence in Fiqh? Research.
4. How are conflicts related to legal matters around you solved? Research the effects of local customs and culture in the process of finding a solution.

A. GENERAL INFORMATION ABOUT THE SOURCES

The lexical definition of ***dalil*** is “guide, something that helps to support a claim.” The plural form of *dalil* is “***dalail***” or “***adilla***.” The definition of *dalil* (source) in Islamic legal terminology is “**the thing that guides one to the desired religious or jurisdictional solution after thorough research and thinking.**” If the judgment reached by means of *dalil* is correct, this judgment is called ‘*ilm* (certain knowledge) and *dalil* used in the process is called as “***dalil qat’i* or certain evidence**” On the other hand religious rulings whose credibility is not definite are referred to as ***zann* (assumption)** and the evidence that has led to this opinion is called “***dalil zanni* or evidence based on assumption.**”

Islamic rulings related to this life and the afterlife have all been established by Muslim jurists (mu-jtahids). Mujtahids follow a particular method when issuing a judgment: They first refer to the sources named as “***adilla shar’iyya***” (legislative sources) which are used in solving Islamic matters. Four of the sources of Islamic law have been agreed upon and consulted by almost all jurists when issuing a ruling. These are **The Book (the Qur’an), Sunnah, ijma’ and qiyas**. These four sources are referred to as “***al-adilla al-arba’a***” meaning “the four most important agreed upon sources.”

Primary Sources (asliyya): The Qur’an and Sunnah are the two primary sources of Islam. **Secondary Sources (far’iyya):** These are the sources that are derived from the primary sources. The most important ones of the secondary sources are: Ijma, Qiyas, Opinions of the Companions of the Prophet (Ashab), Sadd al-Dhara’i, Masalih al-Mursala, ‘Urf, Istihsan, Istishab and Shar’u man Qablana.



B. THE BOOK (THE HOLY QUR'AN)

In Methodology of Islamic Law, the term “the Book (al-Kitab)” refers to the Holy Qur'an.

The Qur'an's Way of Explanation of the Rulings

1- The Qur'an discusses some matters in detail and ties them to a ruling. The rulings such as the shares of each heir in inheritance, the rulings related to marriage and divorce, and some types of punishment can be given as examples of this type of explanation of the Qur'an.



2- The Qur'an, at other places, discusses a matter briefly (mujmal) and does not delve into details. Detailed explanation is delivered through Sunnah, i.e. traditions of the Prophet (pbuh). This is the general fashion of explanation and clarification that is adopted by the Qur'an.

The Qur'an does not provide definite rulings as the codes of law do, however it gives the basis and guidelines upon which Islamic law is built. The Qur'an emphasizes on key principles such as abiding by agreements, being true to one's word, justice, abstaining from fraud and cheating, lying, false accusations, avoiding extravagance and showing off, giving importance to consensus and consultation and the reciprocal act of pleasing one another. The Qur'an, for instance, has found it sufficient to state “Take, [O, Muhammad], from their wealth a charity”¹ however has not given further details about this command thus it has assigned the role of detailed clarification to the Prophet (pbuh). The Qur'an has chosen the same path when discussing qisas, “O you who have believed, prescribed for you is legal retribution for those murdered (Qisas).”², “And there is for you in legal retribu-

tion [saving of] life, O you [people] of understanding, that you may become righteous”³ The Qur'an does not identify the conditions of Qisas, however Sunnah does.

The Qur'an as a source of Islamic Law and its importance

The Book (Qur'an) is the basis and foremost source of Islamic Law. It is the attitude of non-believers, tyrants and sinners to issue crucial rulings that affect people without approaching or consulting the Qur'an first. This matter has been pointed out in the Qur'an as follows:

“Indeed, We sent down the Torah, in which was guidance and light. The prophets who submitted [to Allah] judged by it for the Jews, as did the rabbis and scholars by that with which they were entrusted of the Scripture of Allah, and they were witnesses thereto. So do not fear the people but fear Me, and do not exchange My verses for a small price. And whoever does not judge by what Allah has revealed - then it is those who are the disbelievers. And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers.

1 Al-Tawba, 9: 103.

2 Al-Baqara, 2: 178.

3 Al-Baqara, 2: 179.

And We sent, following in their footsteps, Jesus, the son of Mary, confirming that which came before him in the Torah; and We gave him the Gospel, in which was guidance and light and confirming that which preceded it of the Torah as guidance and instruction for the righteous. And let the People of the Gospel judge by what Allah has revealed therein. And whoever does not judge by what Allah has revealed - then it is those who are the defiantly disobedient.

And We have revealed to you, [O Muhammad], the Book in truth, confirming that which preceded it of the Scripture and as a criterion over it. So judge between them by what Allah has revealed and do not follow their inclinations away from what has come to you of the truth. To each of you We prescribed a law and a method. Had Allah willed, He would have made you one nation [united in religion], but [He intended] to test you in what He has given you; so race to [all that is] good. To Allah is your return all together, and He will [then] inform you concerning that over which you used to differ.

And judge, [O Muhammad], between them by what Allah has revealed and do not follow their inclinations and beware of them, lest they tempt you away from some of what Allah has revealed to you. And if they turn away - then know that Allah only intends to afflict them with some of their [own] sins. And indeed, many among the people are defiantly disobedient.

Then is it the judgment of [the time of] ignorance they desire? But who is better than Allah in judgment for a people who are certain [in faith]?⁴

It is Allah Almighty who has made the Qur'an the first source of Islamic law and jurisprudence. Therefore, one must consult the Qur'an before anything else when issuing a ruling.

C. SUNNAH

Sunnah is **the sayings of the Prophet (pbuh) - other than the Qur'an -, his practices, and the actions which gained his approval.** Sunnah is the second source of Islamic Law after the Qur'an.

Almighty Allah had given the task of explaining and interpreting the verses of the Qur'an to Prophet Muhammad (pbuh) and He stated this in the Qur'an: **"And we have sent down the message (Qur'an) unto you, so that you may explain dearly to men what is sent for them, and that they may give thought?"**⁵ Thus, Allah (swt) sent Sunnah as a complement to the Qur'an, so that the Qur'an may be fully understood.



4 Al-Maida, 5: 44-50.

5 Al-Nahl, 16: 44.

Sunnah, in terms of its nature, can be divided into three categories:

a- Sunnah Qawliyyah (Verbal Sunnah): The sayings and speech of the Prophet (other than the verses of the Qur'an) that he articulated in various situations and for various purposes during his lifetime. This type of Sunnah is also called **Hadith**.

b- Sunnah Fi'iliyyah (Practical Sunnah): These are the actions and behavior of the Prophet (pbuh). His actions while performing ablution (Wudu), ritual prayer (Salah) and pilgrimage (Hajj) are examples of this type of Sunnah.

c- Sunnah Taqririyyah (Tacit Approvals): This type of Sunnah consists of the Prophet's approvals and acceptances. This involves the words, actions and behaviors which happened in the presence of the Prophet, or things which did not happen in his presence but he heard about them; and his nod or smile, or his silence regarding them show his implicit approval.

The Importance of Sunnah as a source of Islamic Law

Allah has identified Sunnah as the second source of Islamic Law in various verses of the Qur'an:

"O you who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If you differ in anything among yourselves, refer it to Allah and His Messenger, if you do believe in Allah and the Last Day: That is best, and most suitable for final determination?"⁶

"He who obeys the Messenger, obeys Allah: But if any turn away, We have not sent you to watch over their (evil deeds)?"⁷

"O you who believe! Obey Allah, and obey the messenger, and make not vain your deeds!"⁸

"What Allah has bestowed on His Messenger (and taken away) from the people of the townships, belongs to Allah, - to His Messenger and to kindred and orphans, the needy and the wayfarer; In order that it may not (merely) make a circuit between the wealthy among you. So take what the Messenger assigns to you, and deny yourselves that which he withholds from you. And fear Allah; for Allah is strict in Punishment?"⁹

"It is not fitting for a Believer, man or woman, when a matter has been decided by Allah and His Messenger to have any option about their decision: if any one disobeys Allah and His Messenger, he is indeed on a clearly wrong Path?"¹⁰

"O you who believe! Obey Allah and His Messenger, and turn not away from him when you hear (himspeak)!"¹¹

"When the Believers are asked to decide a matter before Allah and His Messenger, they reply "We have heard and we obey." Verily it is those who have attained salvation."¹²

Our Prophet (pbuh) said the following about Sunnah's status of being the second source of Islamic Law:

6 Al-Nisa, 4: 59.

7 Al-Nisa, 4: 80.

8 Muhammad, 47: 33.

9 Al-Hashr, 59: 7.

10 Al-Ahzab, 33: 36.

11 Al-Anfal, 8: 20.

12 Al-Nur, 24: 51

“I have left you two things, the Book of Allah and Sunnah. If you strictly adhere to them, you shall never go astray.”¹³

“I have been given The Qur’an and that which is similar to it.”¹⁴

The Prophet replied with the following to those who say “We only consider the Qur’an”, “May I never see any one of you leaning on his couch and when my command reaches him he says, “I do not know that which is other than the word of Allah, I only take that which is in the Qur’an.”¹⁵

The Prophet’s Actions from the Aspect of Bindingness

Although having been already revealed in the Qur’an, many issues were left to the Prophet to be clarified. These issues are: a) Faith and the unseen b) Halal (permitted) and Haram (Forbidden) c) Commands and Prohibitions d) Acts of Worship e) Punishments f) Transactions g) Moral duties h) Rulings and guidelines related to medicine.

Some of the Prophet’s actions have not been directly regarded within the concept of Sunnah such as a) The Prophet’s humanly actions, his physical necessities and so on. b) Administrative and social matters that do not have a text or revelation regarding them c) Ijtihad of a judged) His worldly affairs (army arrangement, agriculture, medical intervention and practices based on skill and experience).

Scholars of Fiqh analyzed such actions and behaviors of the Prophet (pbuh) in terms of whether it is necessary to follow them or not. And they have collected them under the following sub-titles:



1- The Prophet’s actions and behaviors as a human being: His manner of conducting human affairs such as eating, drinking, dressing, sleeping and his actions where he reflected his personal experience and morals such as trade, agriculture, war tactics and diagnosis of illnesses. We are not required, in other words it is not compulsory upon us to follow them.

2- The Prophet’s actions special to him (based on the fact that he was a prophet): The requirement of his performance of the night prayer (*tahajjud*), his fasting for two or three days consecutively without eating or drinking anything at all (*sawm wisal*) and his marriage with more than four wives. These actions are unique to him alone and not his followers. In order to know what we should do in such matters, we need to consult the Qur’an and Sunnah.

3- The Prophet’s actions that establish a religious ruling: These are Prophet’s actions that are source of ruling for Muslims. If the Prophet advised us to do a certain thing, we put in effort carry out his advice. If he commanded or prohibited a certain thing, we must obey his command and avoid what he deemed forbidden, because his speech is in fact a revelation from Allah: **“Nor does he speak from [his own] desire. It is not but a revelation revealed”¹⁶**. Pointing to his mouth with his finger, Allah’s Messenger (pbuh) said; *“I swear by the One in whose hands is my soul, nothing comes out from here except the truth.”¹⁷*

13 Hakim, *Mustadrak*, I, p. 171-172

14 Abu Dawud, Sunan, 4604; al-Darimi, Sunan, 606

15 Imam Shafii, *al-Risale*, Cairo, 1979 (2 ed.) edition of A. M. Shakir, p. 89, article: 295.

16 *Al-Najm*, 53: 3-4.

17 Abu Dawud, *‘Ilm*, 3

Status of Sunnah in Respect to the Qur'an

1- Its Characteristic of Ta'yid (Reinforcement): Some of the Prophet's sayings correlate directly with the rulings in the Qur'an, thus they reinforce or perhaps emphasize these rulings, such as "the requirement to worship Allah alone" and "to abide by Allah's commands and orders" etc. The following verse is an example; **"O you who believe! Do not devour each other's wealth unfairly (through force or fraud). Rather, enter into (a legitimate) trade (and deal fairly) with mutual consent and agreement."** (al-Nisa, 4: 29) Hence, The Prophet (pbuh) stated the following: *"A Muslim's property (wealth) is not Halal (permissible) to another Muslim without his own sincere will."*

2- The Characteristic of Sunnah as a Clarifier (Tabyin): Some rulings of Sunnah serve as an interpreter (tafsir) of the verses in the Qur'an. For example, the Qur'an has ordered payment of Zakah, however it does not mention details such as out of what property, when, and how much is to be given. The Prophet (pbuh) identified and made clear every detail about Zakah. Likewise, Jum'a (Friday) prayer is declared to be compulsory by a verse in the Qur'an. However, it was the Prophet (pbuh) who described its conditions and conveyed the way in which it is to be performed.



We must take Prophet Muhammad (pbuh) as an example. Discuss in terms of Islamic Law whether or not we should follow every action of the Prophet.

The expression in regards to fasting **"separation of the black string from the white string"** is used to denote the discerning the darkness of night and white streak of dawn was clarified by our Prophet (pbuh). Likewise, he explained "the amputation of the hand of a thief" as cutting off the right hand including the wrist.

Sunnah may also put a limit or restriction to an absolute (*mutlaq*) ruling of the Qur'an. The prohibition of marrying a woman together with her maternal or paternal aunt is an example for this type. There is a consensus regarding the prohibition of such marriage although it is not mentioned in the Qur'an among those whose marriage is not permitted. Thus, since in this example the ruling given by Sunnah is clear, the general ruling of the Qur'an has been restricted.



3- Tashri' (Issuing Rulings in matters whose rulings not Established by the Qur'an): Sunnah can also establish new rulings that do not exist in the Qur'an. This is because Sunnah is entitled to give rulings on its own just like the Qur'an. Some examples for such rulings are: "the prohibition of the meat of domestic donkeys, clawed birds and wild animals which hunt with their teeth." "the prohibition of the marriage of a man to a woman together with her aunt." "stoning an adulterer and adulteress." and "allocating a certain share for grandmother in inheritance" etc.

D. IJMA'

Ijma' can be defined as **consensus of all Muslim jurists (Mujtahids) of a particular era in any time after the death of the Messenger of Allah upon the ruling of a given issue.**

Al-Amidi, one of the Ash'ari scholars, defines ijma' as follows: "Consensus of all ahl al-hal wa al-'aqd (qualified, just, with integrity, devout) scholars of the Muslim nation in a generation on a certain issue."¹⁸

Ijma' is relevant at any time after the death of the Prophet (pbuh). However, Muslim jurists have not been able to agree upon any matter other than the ones unanimously accepted by the Companions of the Prophet (pbuh).

Reasons why Ijma' is accepted as a source

1- Almighty Allah states in The Qur'an: **"If anyone contends with the Messenger even after guidance has been plainly conveyed to him, and follows a path other than that becoming to men of Faith, We shall leave him in the path he has chosen, and land him in Hell,- what an evil refuge!"**¹⁹ According to this verse, when qualified Muslim Jurists agree on a matter, it is obligatory upon us to accept it and follow it.

2- The Prophet said that Muslims will not ever unite upon corruption and indecency, thus pressed; *"My ummah will not unite upon error (misguidance)."*²⁰

It is stated in another *hadith*: *"What a Muslim regards beautiful is beautiful too in the sight of Allah."*²¹

Types of Ijma'

1. Ijma' Sarih (Explicit Consensus): This is the type of ijma that mujtahids express their opinions explicitly regarding a religious matter even though they may disagree at first but come to an agreement afterwards. The only condition is not to have any disagreeing opinions.

2. Ijma' Sukuti (Tacit Consensus): This is the type of ijma' based on silence. It does not imply a definite agreement of all of its participants. In this type of ijma, some of the jurists of a particular age give an expressed opinion concerning a matter while the rest of the jurists remain silent. Whether or not this type of ijma' can be considered a proof was argued. Imam Malik, Shafii, and some other jurists do not consider this type of ijma' as a source (dalil). According to them, their silence does not necessarily mean agreement, but it may also imply respect or perhaps an attempt to avoid strife (fitnah).

Examples of Ijma' and the Basis of Ijma'

After the death of the Prophet (pbuh), the compilation and distribution of the Qur'an, the prohibition of the marriage between a Muslim woman and non-Muslim man, recitation of the call for prayer twice for Friday prayer are all examples of rulings that the rightly guided caliphs deduced with scrutiny by means of ijma.

Allah stated in the Qur'an, **"it is forbidden for you to marry your mothers or daughters"**²² thus it is prohibited for a son to marry his mother and a father to marry his daughter. However, by means of ijma', the words "mothers" and "daughters" in this verse were also interpreted as carrying the meanings "grand-mothers" and "grand-daughters."

¹⁸ Al-Amidi, *al-Ihkam*, vol. I, p. 262.

¹⁹ Al-Nisa, 4: 115.

²⁰ Ibn Maja, Fitan, 8

²¹ Ahmad b. Hanbal, Musnad, vol. I, 379

²² Al-Nisa, 4: 23.

Furthermore, the Companions deduced through *ijma'* that grandmothers receive one sixth of inheritance. During the time of the caliph Abu Bakr (r.a.), an old woman whose grandson had died came to the caliph to ask whether or not she was entitled to her grandson's inheritance. Abu Bakr (r.a.) replied; "I cannot find any answer for you in Allah's book, and I do not recall anything from Allah's Messenger regarding this matter. Now go, and I shall discuss this issue with my friends." That day after noon prayer, he asked the Companions whether they have any knowledge of this matter. Mughira b. Shu'ba (r.a.) stood up and asserted: "The Messenger of Allah (pbuh) had given a grandmother one sixth of inheritance, I witnessed it." When asked whether anybody else had any knowledge, Muhammad b. Maslama replied that he had also heard the Prophet had articulated similar words. Thus, they agreed upon that one sixth of inheritance should be given to the grandmother, and nobody objected.²³

After conquering Syria, Caliph Umar (r.a.) formed a panel of consensus regarding not to distribute the conquered lands among Muslim soldiers. Umar (r.a.) was not in support of the distribution of the land due to his prioritizing of the "common good" (Maslaha). The process of *ijma'* took two whole days and after much debate, Umar (r.a.) was unable to convince his friends. However, as soon as he recited the following verse, they were convinced thereupon: **"What Allah has bestowed on His Messenger (and taken away) from the people of the townships, - belongs to Allah,- to His Messenger and to kindred and orphans, the needy and the wayfarer; In order that it may not (merely) make a circuit between the wealthy among you. So take what the Messenger assigns to you, and deny yourselves that which he withholds from you. And fear Allah; for Allah is strict in Punishment."** (al-Hashr, 59: 7).

The companions also agreed upon regarding the prohibition of lard (pig fat). The basis of this *ijma'* was equating the prohibition of the meat of swine to its fat (lard).

The Significance and Benefits of Ijma'

A deduced ruling has the possibility of being either right or wrong. However, if all mujtahids are in agreement regarding a certain ruling, the ruling may be deemed as unobjectionably accurate. Since this is sufficient to remove any doubt from the ruling, in fact it is a sign of the credibility of that ruling.



Some rulings in the Qur'an and Sunnah may not express certainty. Since they are open to interpretation, they gain certainty with the application of *ijma'*. Although the word "salat" is lexically defined as supplication, we know by means of *ijma'* that it refers to a certain act of worship prescribed and specified in the Qur'an. Likewise the term "siyam" means to hold or keep a secret; however we know by *ijma'* the word siyam mentioned in the Qur'an refers to the act of fasting.

E. QIYAS

The linguistic definition of *qiyas* is **to measure, equate, or compare and contrast**. However, in legal terminology *qiyas* is defined as, **"To deduce or obtain the ruling of a case (for which a ruling is not clearly mentioned or expressed in the Qur'an or Sunnah) through analogical deduction to an existing ruling in the Qur'an or Sunnah carrying a common rationale with the case in question."**

²³ Abu Dawud, Faraiz, 5; al-Tirmidhi, Faraiz 10; Ibn Maja, Faraiz, 4; al-Mawsili, *al-Ikhtiyar*, V, 90.

Reasons why Qiyas is considered a source

Although the mujtahids of the Zahiri, Mu'tazili and Ja'fari schools do not consider qiyas to be a legislative source, the majority of Muslim scholars accepts qiyas as a source and has actually put it into practice due to the following supporting evidences:

1- Allah (s.w.t) says in the Qur'an: **"O you who believe! Obey Allah, and Obey the Messenger, and those charged with authority among you. If you differ in anything among yourselves, refer it to Allah and His Messenger, if you do believe in Allah and the Last Day; that is best, and most suitable for final determination."**²⁴ Referring something to Allah and His Messenger (pbuh) can be done by knowing the objectives of the Qur'an and the Sunnah and by making analogical deductions.

2- "When Muadh b. Jabal was appointed as the governor of Yemen, the following conversation took place between him and the Prophet (pbuh):²⁵

How will you judge when a case is brought to your attention?

- I shall do so in accordance with the Qur'an.

- *And if you do not find the answer in the Qur'an?*

- I shall judge in accordance with Sunnah of the Messenger of Allah (pbuh).

- *And if you do not find it in Sunnah?*

- I shall use my independent judgment and I will not spare any effort.

The Messenger of Allah (pbuh) then patted him on the chest with his blessed hand and said, *"Praise be to Allah Who has helped the messenger of His Messenger to be in agreement with that which pleases the Messenger of Allah."*²⁶ Thus, it shows that qiyas is in fact a form of ijtihad which has been openly encouraged by the Prophet (pbuh).

3- While some of the Companions were giving their pledge to Abu Bakr (r.a.), they used the analogy between being the leader in ritual prayers (imam) and the leader of the Ummah (caliph). After having carried out qiyas, they came to the following conclusion: "The Prophet (pbuh) had appointed him (Abu Bakr) as the leader of our religious affair, so why shouldn't we choose him as the leader of our worldly affairs?"

4- The Caliph Umar (r.a.), in a letter to the judge Abu Musa al-Ashari, stated that: "Know the similar (analogous) matters, then make qiyas between them."²⁷ Ibrahim al-Nakhai, a well-known jurist (d. 95/714) asserted that: "I memorize a hadith; then I assign a hundred similar cases (analogies) to it."²⁸

Prerequisites and Examples of Qiyas

There are four essential elements of qiyas:

1. Original case (asl): It is the case whose ruling was given in the Qur'an or Sunnah. According to Imam Malik, the consensus of the people of Medina and the rulings of the Companions are also considered as part of Sunnah, so they can also provide the basis of qiyas.

2. The new case (far'): It is the new problem for which no ruling exists in any text.

3. Common rationale / Effective cause ('illah): It is the common rationale between the two cases which causes the application of the rule of asl to far'.

²⁴ Al-Nisa, 4: 59.

²⁵ Al-Tirmidhi, Ahkam, 3

²⁶ Al-Tirmidhi, Ahkam, 3; It is also narrated by Abu Dawud and al-Darimi.

²⁷ Al-Sarakhsi, Mabsut, vol. 16, p. 62-63

²⁸ Hamdi Döndüren, Delilleriyle İslâm Hukuku, Istanbul 1983, p. 52

4. Ruling (hukm): It is the rule of the original case (asl) which is to be extended to the new case (far').

1- Prohibition of drugs and all other intoxicants through analogy to the prohibition of wine. Allah (s.w.t) prohibited drinking wine by the following verse in the Qur'an: **"O you who believe! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination, - of Satan's handwork: eschew such (abomination), that you may prosper?"**²⁹ Over time, people have begun consum-



ing intoxicants such as beer, whisky, vodka etc. A mujtahid would assert that these drinks are also prohibited due to the fact that they also cause intoxication. Thus, the mujtahid has not declared a new ruling, but in fact has extended the ruling about wine to an identical case by the use of qiyas.

In this case; asl is drinking wine, far' is beer, vodka etc., 'illah is the intoxicating property of such drinks, and the ruling is haram (prohibited).

2- Prohibition of dealing with other activities during Friday Prayer time through analogy to the prohibition of trade at the specified time on Fridays, **"Oh you who believe! When the adhan is called for the prayer on the day of Jum'uah (Friday), then proceed to the remembrance of Allah and leave trade. That is better for you, if only you knew?"**³⁰ This verse indicates that after the recitation of adhan for Friday prayer, all types of trade are prohibited. Mujtahids affirm that for those who are obliged to go to the Friday Prayer, carrying out other types of activities is also forbidden during that specific time.

3- A murderer is not permitted to receive a share from the will of his victim. The Prophet (pbuh) said, *'ii murderer may not inherit.'*³¹ Mujtahids have agreed through analogy that when a person is written in the will of a testator and kills the testator with the intention to obtain the wealth promised in the will sooner, he shall not be entitled to any of his victim's inheritance, because he commits the murder to get the wealth sooner.

4- Accepting medical expenses being included in nafaqa (material support/ sustenance). Allah has mentioned nafaqa in the Qur'an as food and clothing: **"... Upon the father is the mother's provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child and no father through his child."**³² Muslim jurists agree upon that medical treatment is a necessity of life just like food and clothing, thus by making qiyas they agree upon that medical expenses should also be a part of *nafaqa*.

5- Prohibition of speaking in a foreign language though analogy to the prohibition of two people whispering to each other while a third party is present. The Prophet expressed *"When there are three (persons), two should not converse secretly between themselves to the exclusion of the (third) one."*³³ Thus, Muslim jurists have agreed upon that it is not permissible for two people to speak in a foreign language while a third person who does not understand that language is present.

29 Al-Maide, 5: 90.

30 Al-Jum'a, 62: 9.

31 Abu Dawud, Diyat, 18

32 Al-Baqara, 2: 233.

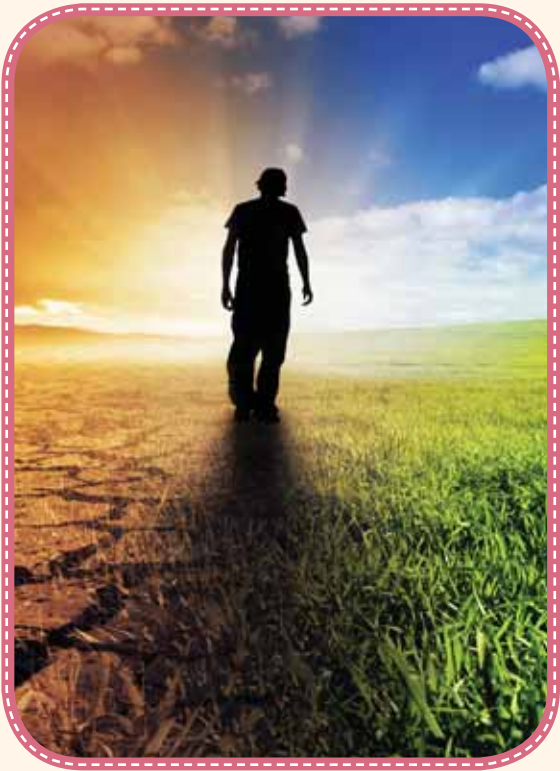
33 Al-Bukhari, isti'dhan, 45; Muslim, salam, 36

Requirements of ‘Illah

- A valid connection between the ‘illah and ruling.
- It should not be specific to the original case but it can be applicable to another case.
- It must be clear. It should change depending upon the person, region or society in which it is applied.
- There must be no evidence which proves that the ‘illah is religiously invalid.

Rulings that are derived through qiyas are tied to the ‘illah (cause) rather than to the hikmah (underlying wisdom). This is because the hikmah may change with the change of people and circumstances.

For example, in Chapter Nisa verse 101, it is stated that prayers may be shortened whilst travelling. What is the ‘illah of this ruling? Generally, what first comes to mind is the “hardship” caused by travel. However, even though hardship is a clear attribute, it differs depending upon the region, individual and environment. Thus, here a true ‘illah needs to be defined, and this ‘illah is in fact the act of travelling itself. Every trip or journey has its own difficulty. Thus, we may conclude that it is permissible to shorten prayers during any trip, but not during (any) hardship.



F. SECONDARY SOURCES

1. Views of the Companions of the Messenger of Allah (SAHABA)

What it mean by the views of companions is that the religious rulings (fatwa) or opinions of a Companion of the Prophet. The Companions are the ones who were best in knowledge about the reasons of revelation (of the verses of the Qur'an) and the way in which they were revealed. Hence, they were the most aware ones of the purpose of Islamic rulings. Allah praises the Companions in the Qur'an as follows: **“And the first forerunners [in the faith] among the Muhajireen and the Ansar and those who followed them with good conduct - Allah is pleased with them and they are pleased with Him.”**³⁴ In this regard, the Prophet (pbuh) stated that, *“The best of my ummah are those who were present in my time, then those that follow, then those that follow them,”*³⁵ thus he pointed out the greatness of his Companions.

Most of the Companions avoided issuing their personal opinions. There are approximately 130 companions whose rulings have reached us. Seven of them have enough fatwas to be compiled into books. These seven companions or *“Fuqaha al-sab'a”* are: Umar ibn al Khattab, 'Aisha, Zayd b. Thabit, Abdullah b. Mas'ud, Abdullah b. Abbas and Abdullah b. Umar (may Allah be pleased with all of them).

³⁴ Al-Tawba, 9: 100.

³⁵ Muslim, Fada'il al-Sahaba, 213, 215; Abu Dawud, Sunnah, 9

The Hanafi, Maliki, Shafii and Hanbali scholars said that “the views of the companions regarding *‘taabbudi’* (devotional) issues have to be followed, when there is no particular ruling in the Qur’an, Sunnah or Ijma’ (Consensus) about the issue in question.”³⁶

Imam Abu Hanifa said that “I take and accept what is in the book of Allah’s. If I do not find the ruling in the Qur’an, I turn to Sunnah. If I do not find it there either, I approach any one from the Sahaba and seek his opinion. However, when it comes to the following generation (tabi’un) such as Ibrahim an-Nahai, Sha’bi, Hasan al-Basri and Ata, I apply my personal ijtihad like them.

Imam Shafii stated the following in his book “Risala”: “If a ruling cannot be found in the Qur’an or Sunnah, views of the Sahaba are to be consulted.”³⁷ He also states in his book “al-Umm” that there is no excuse for those who know the Qur’an and Sunnah and that such people must follow their requirements. If there is no ruling in the Qur’an or the Sunnah, we can consult to the views of the Companions. If we do not find anything regarding the issue in question close to the rulings of the Qur’an and the Sunnah, it is better for us to consult to the views of Abu Bakr, ‘Umar, Uthman (r. anhum). If we have a proof showing that a view is closer to the rulings of the Qur’an and the Sunnah, we should follow that view.”³⁸ Imam Ahmad b. Hanbal agreed with him in this regard.

Imam Malik’s book titled “Muwatta” is filled with rulings based on fatwas issued by various Companions of the Prophet. Imam Malik highlighted the importance of the opinions of Sahaba alongside the sayings of the Prophet (pbuh). He considered their views as part of Sunnah. Contrary to the views of Abu Hanifa and al-Shafii, Imam Malik also attached importance to the opinions of reputable Tabi’un.

The Mu’tazila and Shi’a sects do not consider every Sahabi’s opinion as a source because they argue that not all Companions were qualified enough to be considered a faqih (Muslim jurist). They assert that the Companions may err, thus their views are merely their personal thoughts and opinions, and cannot be considered a source for extracting rulings.

Examples for the views of Sahaba:

- ❖ When Abu Bakr (r.a.) was asked about the meaning of the word “Kalala” which was mentioned in the verse regarding inheritance, he replied: *“I will tell my personal opinion about this word, if I am right, it is from Allah, and if I err, it is from myself and devil. As for Kalala, it means the inheritor other than the father and child.”*
- ❖ Umar (r.a.) ceased the payment of zakat to the group of people called “Muallafat al-qulub” which is one of the groups mentioned in the Qur’an that can receive a portion from zakat revenues. Regarding this, Caliph Umar (r.a.) expressed the following: *“The Messenger of Allah used to give this money in order to draw their hearts closer to Islam. However, Allah has made Islam and the Muslim state exalted and today there is no need for such an investment. Fortunate are those who accept Islam and remain sincere in their faith, as for those who do not (remain sincere), they shall prepare for their own destruction.”*



36 Mir'at al-Usul, 2: 250; al-Ghazzali, al-Mustasfa, vol. 1, p. 135

37 Al-Shafii, al-Risala, 597-598

38 Al-Shafii, al-Umm, VII, 246

- ❖ The assertion that the maximum duration of pregnancy cannot exceed two years. This is based on report about 'Aisha's view. Such a report proves that the Sahabi heard the ruling of that issue from the Prophet (pbuh), because religious issues related to measures and numbers cannot be known by human intellect, therefore this shows that the companion had heard it from the Prophet himself.

2. Sadd al-Dharai' (Blocking the means)

Sadd al-dharai' is defined as **the blocking or hindering the paths (means) which may lead to something prohibited in Islamic Law.**

There are several **examples of sadd al-dharai'** in the Qur'an and Sunnah:

- ❖ In the Qur'an, it is commanded not to insult the idols of the pagans. Insulting their deities will give them the excuse to insult and curse Allah. Allah says in the following verse: **"And do not insult those that they invoke other than Allah, lest they insult Allah in enmity without knowledge?"**³⁹
- ❖ The Prophet did not permit giving gifts while paying the debts back as it may lead to charge interest (riba) or it may be confused with interest. He also prohibited giving gifts to a judge or ruler, as it may encourage him to be unfair and biased in his job.
- ❖ The jurists of the Sahaba agreed upon that a woman who is divorced by her fatally ill husband should be included into the heirs. Because there is a possibility that her husband divorced her in order to exclude her from his inheritance. In order to prevent the usage of divorce to cause an injustice to the wife, companions issued the above-mentioned judgment.
- ❖ The prohibition of a man and woman [who have no religious obstacles to get married] being alone in a place without the presence of a third person as this may lead to zina (adultery).
- ❖ The prohibition of proposing marriage to somebody else's fiancé or interfering while two people are making a trade agreement or bargaining as this provokes conflict and enmity between people.
- ❖ The Prophet did not order to execute the hypocrites (munafiqun) who had been causing great mischief among Muslims at such critical times as war. He had not done so, because if he had, it would have given the enemies of Islam a chance to say, "Muhammad is killing his own men."
- ❖ During the time of war, it is not appropriate to punish the thieves for it might lead them to unite with the enemy and fight against believers.
- ❖ The Jumu'ah (Friday) prayer is obligatory. Because of that, it is also obligatory to leave all trade and work, and go for prayer at the specified time.
- ❖ Allah's Messenger (pbuh) forbade the building masjids on to the graveyards as it might give the impression of worshipping human.



39 Al-An'am, 8: 108.

- ❖ Rulings derived through ijtihad may change according to the circumstances of the present era. Carrying a weapon was considered Sunnah in the past, however today in order to prevent misuse, it can only be carried under specified conditions with a license.
- ❖ It is not allowed to sell grapes to someone known to produce wine. Drinking even a drop of alcohol is not allowed as it may lead to drinking more. It is useful to remember the Prophet Muhammad's hadith: "If a large amount of anything causes intoxication, a small amount of it is prohibited."⁴⁰
- ❖ In terms of sadd al-dharai', the production of substances used in certain drugs may be placed under control.

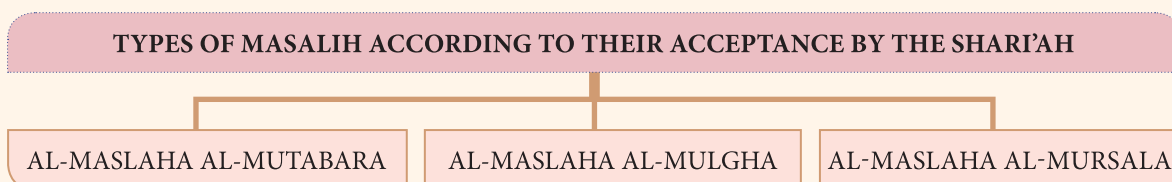
3. Al-Masalih al-Mursala (Consideration of Public Interest)

Al-Maslaha al-Mursala refers to issuing a rule in accordance with the public good in the absence of ruling regarding a matter in the Qur'an, Sunnah, ijma' or Qiyas. Many things have been forbidden in society for the sake of public good. Such are the things that give more harm than good and examples of such things are alcohol and gambling.⁴¹

The principle of taking what is good for the people and avoiding what is mostly harmful is a concept known as *al-Maslaha al-Mursala*, which was one of the concepts frequently applied by Imam Malik.

Types of Masalih according to their acceptance by the Sharia:

1. Al-Maslaha al-Mutabara, 2. Al-Maslaha al-Mulgha, 3. Al-Maslaha al-Mursala.



1. Al-Maslaha al-Mutabara: This is the type of maslaha which is approved by the Shari'a. This type of maslaha aims to protect five fundamental principles:

a) Protection of faith: Belief in Allah is commanded in order to maintain the existence of religion and acts of worship such as ritual prayer and fasting have been decreed. On the other hand for the protection of Islam, fighting against those who attack Islam and harass Muslims has been called upon

b) Protection of life: The human life has been protected with punishments, such as qisas and diyyah, for the crimes committed against human life. In respect to the health of human beings, certain facilities in acts of worship are provided for those who are physically unwell.

c) Protection of intellect: For the protection of human intellect, intoxicants such as alcohol and narcotics have been prohibited, and certain types of punishments have been established for those who use such harmful substances.

d) Protection of lineage: For the protection of human lineage, Islam has decreed marriage lawful and extra -marital relationships unlawful. Adultery and fornication are forbidden and punishments are decreed for those who do not obey these rules.

e) Protection of property: The protection of property has been ensured by the command and encouragement of humanity to work and by forbidding stealing other peoples' property. Again, for those who steal others' belongings shall be punished according to Islamic law. Cheating, charging interest, and unfair gain are all other prohibited ways of earning.

40 Abu Dawud, Ashriba, 5.

41 Bkz. Bakara süresi, 219. ayet

2. Al-Maslaha al-Mulgha: This is the type of maslaha abolished by Islam. For example, building casinos or pubs to support the economy of the country. In the process of ijtihad, no attention is paid to this type of maslaha.

3. Al-Maslaha al-Mursala: There is no ruling or evidence regarding the approval or rejection of this type Maslaha. Maslaha mursala has certain characteristics such as “providing benefit for the public or prevention harm from it.” There are **many examples from the time of the Sahaba and tabi’un showing that maslaha mursala was frequently used in matters about which no other evidence existed to derive a ruling.**

- ❖ The compilation of the Qur’an, Abu Bakr’s nomination of Umar as his successor, Uthman’s getting rid of the varied Qur’anic texts other than the original copy, and his command for the recitation of a second adhan for Friday Prayer, Umar’s command to governor Hudhayfa to divorce his Christian wife were all examples for the rulings based on ensuring Maslaha.
- ❖ According to Hanafis, after victory in a war, if Muslims are not able to take the booty with them, they may destroy what is left behind, slaughter their animals and burn the whole, lest the enemy reacquires and gains benefit from it.⁴²
- ❖ Likewise, Imam Shafii asserted that, in the case of the enemy’s defeat, if it is absolutely necessary to defeat the enemy, it is allowed for Muslim army to cut the trees, kill their horses and destroy their weaponry.
- ❖ Imam Ahmad b. Hanbal articulated that anybody who causes mischief and unrest might be exiled to protect the public from his evil. Furthermore, even if they are more than one person, those who unjustly murder a person shall all be punished by qisas or death.
- ❖ The prohibition of things which are generally harmful to the human body such as the ban on smoking in closed and covered areas, littering the environment, and spitting on the ground are all bans tied to the principle of Maslaha.

Rules may change based on the changes in the accepted Maslaha over time. The issue of smoking can be shown as an example. In the past, people were unaware of the dangers and health risks associated with smoking. In fact smoking was even considered harmless and therefore permissible. But, with the increased scientific research and development, we now know about the dangers of smoking. Thus, the money spent on smoking is waste as it has no benefit. It is also clear that harming one’s own health and that of others contradicts with basic principles of Islam.

In Majalla Ahkam al-Adliyya, i.e. Ottoman legal code, we may find the following articles based on maslaha:

“A private injury is tolerated in order to ward off a public injury” (article 26). In other words, sometimes harms may be inflicted upon individuals to protect the general public.

“From two evils, the lesser evil may be preferred.” (article 29)

Whether a need be general or specific, it is a necessity. (article 32) in other words peoples’ general or private needs should be dealt with as a necessity.

4. ‘Urf (Custom)

‘Urf is a legal term which refers to **the commonly adopted actions and sayings of a given society directed by the common sense.** Traditional values and customs accepted by the Muslim community as good are considered one of the secondary sources of Islamic law. The Prophet (pbuh) said, *“Things which are regarded by Muslims as good are also regarded good in the presence of Allah.”*⁴³

42 Abu Yusuf, al-Raddu ala Siyar al-Awza’i, Cairo 1357/1938, p. 83

43 Ahmad b. Hanbal, Musnad, I, 379.

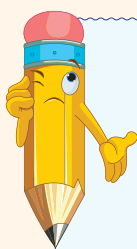
Some of the legal maxims found in Majallah show the significance ‘urf and state that it is one of the sources of Islamic law:

“Custom is an arbitrator” (article 36) which means customs may be invoked to justify a judgment.

“A matter recognized by custom is regarded as though it were a contractual obligation” (Article 43) in other words things that are known by customs is accepted as part of contracts even when they are not written in the contracts.

“A matter recognized by merchants is regarded as being a contractual obligation between them” (Article 44) in other words the customary practices in business world is like the rules determined by them.

“A matter established by custom is like a matter established by law.” (Article 45) In other words matters established by customs are just like the ones established by verses and ahadith.



LET US EVALUATE

According to Imam Malik’s madhhab, the lifestyle and practices of the people of Medina have a significant place [after the Qur’an and Sunnah]. The reason for this is that he considers the lifestyle and the practices of the people of Medina as the living application of Prophet’s Sunnah. This is why Imam Malik used the customs of Medinan people as the basis of his judgments. As he highlighted the significance of custom, he also paid attention to the principle of muraat al-khilaf (in order to avoid following a wrong view, it is recommended following the views agreed upon by everyone).

Evaluate and discuss these views of Imam Malik in terms of Islamic Law.

Some matters are left for the application of ‘urf in Islam. For example;

- ❖ Which expenses of rental house are upon the tenant and which one of them are upon the owner are determined by the customs, if the contract is not clear in those respects. Likewise, the organization of wedding expenses of both families is based on the ‘urf (customs) of the couple.
- ❖ The amount of money paid to a nursing mother is based on ‘urf. Allah says in the Qur’an, **“And if you wish to have your children nursed by a substitute, give payment according to what is acceptable.”**⁴⁴
- ❖ If the guardian of an orphan is poor, he may take some of the orphan’s wealth according to what is acceptable by ‘urf: **“And whoever [when acting as a guardian], is self-sufficient should refrain [from taking a fee]; and whoever is poor- let him take according to what is acceptable.”**⁴⁵
- ❖ Covering the expenses of the wife and children is the job of the husband. Allah says in the Qur’an, **“Upon the father is the mother’s provision and their clothing according to what is acceptable. No person is charged with more than his capacity.”**⁴⁶

44 Al-Baqara, 2: 233.

45 Al-Nisa, 4: 6.

46 Al-Baqara, 2: 233.

'Urf is divided into two categories in terms of its validity according to Islamic Law:

1. **'Urf Sahih:** Customs that do not contradict with the principles of the Qur'an and Sunnah.

2. **'Urf Fasid:** Customs which have been deemed invalid because it contradicts a verse in the Qur'an or a hadith. The following can be given as examples: Charging of interest, drinking alcohol, men and women's being in gatherings such as wedding ceremonies in religiously inappropriate manners. Invalid customs may never be classified lawful, no matter how widespread they become.

BOX OF WISDOM

For any 'urf or tradition to be acceptable, it must be in congruence with the principles of Qur'an and Sunnah. This needs to be taken into account in every stage of change, as there may be certain practices in a society which may arise over time. For example, drinking alcohol may become widespread in a particular place, however this does not make it lawful as it contradicts to the prohibitions in the Qur'an and Sunnah, thus no Mujtahid may express that drinking alcohol is permissible because of its widespread existence in the customs of that place.

Rulings based on 'urf may change over time. An article of the Ottoman legal code Majalla states that "It is an accepted fact that the terms of law change with the change in the circumstances of time and place." (Article 39) In other words, it is inevitable that the independent judgments change with the change of the conditions of time and place."

TYPES OF 'URF IN TERMS OF ITS VALIDITY

'Urf Sahih (Valid According to Islamic Law)

'Urf Fasid (Invalid According to Islamic Law)

In the earlier times of Islamic history, it was considered inappropriate to earn money for teaching Qur'an, however today it is considered acceptable as the circumstances have changed.

It is a general rule in Islamic law that when a person is entrusted with the goods of others, he is not held responsible in the case of damage to the item, unless it is purposefully done or caused by negligence. However, over time, because people have become less trustworthy, this rule has changed and it is accepted that people who are entrusted with an item should be held responsible in the case of loss or damage to the item, and they must compensate the damage.

5. Istihsan

Istihsan literally means "to approve, or to deem something preferable." In its juristic sense, istihsan is a method of exercising personal opinion in order to avoid any rigidity and unfairness that might result from the enforcement of the existing law. "Juristic preference" is a fitting description of istihsan, as it involves setting aside as established analogy in favor of an alternative ruling which serves the ideals of justice and public interest in a better way.⁴⁷

47 Kamali, Muhammad Hashim, *Principles of Islamic Jurisprudence*, The Islamic Texts Society, 1991, p. 218.

Istihsan has thus become the subject of much controversy among our jurists. Whereas the Hanafi, Maliki, and Hanbali jurists have validated istihsan as a subsidiary source of law, while Imam Shafii opposed it and said “Whoever approves of juristic preference (istihsan) is making himself the lawmaker.” Despite such statements, it is seen that Imam Shafii applied istihsan as a method in some of his judgments. Al-Amidi reports the following examples in his book titled “al-Ihkam”: “Imam Shafii permitted entry to public baths where the users are charged a fixed price without any agreement on the amount of water they use or the duration of their stay based on istihsan.” Moreover, according to the reports of the same author, Imam Shafii said, “Based on analogy, it is necessary to cut the right hand as well, but it is not cut according to istihsan.” “I deem appropriate amount of mut’a (the present given to woman married and then divorced before consummation of marriage) to be thirty dirham.” “I deem appropriate for the person who has the preemption right to use his/her right (shuf’a) in three days.” In the light of this information, we should interpret Imam Shafii’s above-mentioned words as issuing judgments according to personal whims and subjective considerations without basing it on a proper evidence. Without a doubt, istihsan in this latter sense is invalid according to all jurists.⁴⁸

Types of Istihsan and their examples:

1. Istihsan based on a nass and ijma: Even though it is not appropriate to issue judgments based on istihsan when there is an evidence about the matter in question in the Qur’an, the Sunnah, or if there is consensus about it, judgments have been issued based on istihsan:

- ❖ The ruling that the fast of a person who forgets and unknowingly eats and drinks is not nullified is established by using the principle of *istihsan*. According to the general rule, the fast should normally be nullified under such circumstances. However, the Prophet (pbuh) stated that “the fasting people who forgets and unknowingly eats and drinks should complete their fast, because Allah made him eat and drink.”⁴⁹ Abu Hanifa said on this matter, “If it had not been for this hadith, I would have acted according to analogy and ruled that the fast of a person who forgets and unknowingly eats and drinks would be nullified.”⁵⁰
- ❖ There is a consensus among Muslim jurists that salam contract, which means a sale whereby the seller undertakes to supply some specific goods to the buyer at a future date in exchange of an advanced price fully paid at spot, is permissible. In this regard, there are two sayings reported from the Prophet (pbuh). One of them is of a general nature and requires the invalidity of such agreement. The Prophet said to Hakim b. Hizam; “*Do not sell something you do not possess.*”⁵¹ The second text is more specific, which expresses that the salam contract is possible and lawful. When the Prophet came to Medina, he saw that Medinans were making a one or two year salam contract on the matter of their fruit (ready cash, the fruits to be given later). For this, he stated, “*For the people carrying out a sale by way of the salam contract, they should do this according to a certain measuring, a certain scale and they should carry it out by determining the length of time of the process.*”⁵²

2. Istihsan based on the Necessity and Needs: It is to exempt certain matters from the general religious ruling due to darurah or necessity. Being allowed to perform the religious ablution with the leftover water of the hawk, vulture and the sparrow hawk is based on the ruling of the istihsan. According to the analogy, just like the ruling about lions, tigers and other predatory animals, it must be ruled that the left-

48 Al-Amidi, al-Ihkam, vol. III, p. 138

49 Al-Bukhari, Ayman, 15, Sawm: 26; al-Tirmidhi, Sawm: 26; Muslim, Siyam, 171.

50 Zekiyüddin Şa’bân, İslam Hukuk İlminin Esasları, p. 165.

51 Abu Dawud, Buyu’, 70.

52 Abu Dawud, Buyu’, 57; al-Nasai, Buyu’, 63.

over water of the predatory birds should be considered religiously dirty, while according to the *istihsan*, as a precaution, this water is just considered to be *makruh*.

- ❖ According to the general rule, the water will not be considered clean unless the impurities are removed out of it. If a well becomes dirty, it will not become clean unless its entire water is emptied out. However according to the *istihsan*, due to necessity, the well will be considered clean when certain buckets of the water are emptied out of it.

3. Istihsan due to Maslahah and

Urf: This is the type of judgement given based on customary practices and public interests by abandoning the general rule applied in similar cases.

- ❖ The ruling that it is not lawful to give zakat to the sons of Hashim is a ruling adopted by many Muslim jurists. Because Allah's Messenger (pbuh) stated, "Zakat is not allowed for Muhammad and the family of Muhammad"⁵³ and **"One fifth of one fifth has been given as a right to them (the sons of Hashim) so that this may suffice for them and so they will not have to depend on other people?"**⁵⁴ However, Abu Hanifa and Malik ruled that it would be lawful to give zakat to the sons of Hashim in their time, because the portion that used to be allocated for them from the war booties could not be allocated anymore. When the custom changed so did the ruling.
- ❖ The properties that are endowed for religious purposes should be real estates. Like immovable real estate properties such as houses, lands can be the subject of a pious foundation, whereas movable goods cannot. However, some Muslim jurists such as Imam Shafii and Imam Muhammad al-Shaibani permitted that establishing foundations on the basis of movable items such as books, axes, and handmills which do not run out by usage.



6. Istishab

Istishab means **the presumption of continuity of a ruling that was established in the past as long as there is no evidence suggesting that it has changed**. Istishab mostly aims to protect the acquired rights of those who are lost after disasters such as war, earthquakes and fires. Such people's existing rights will continue to be protected until the news of their death arrives or until the court rules for their death. For example, for the person who has not been heard from for a long period of time, their rights over their property will be protected for a certain period of time and their property will not be distributed amongst their heirs.

Some principles related to istishab are as follows:

1- Permissibility is the original state of things: Allah has created everything that exists on this earth for humans and has presented everything to them so that they may benefit from them.⁵⁵ When a question arises as to the legality of a particular kind of beverage or food, and there is no other evidence to determine its value, it should be presumed that it is permissible, because it is a blessing..

⁵³ Muslim, Zakat, 168.

⁵⁴ Al-Nasai, Fay', 15; al-Zaylai, Nasb al-Raya, II, 404.

⁵⁵ See Ibrahim, 14: 32-34.

- ❖ It is lawful to benefit from things about which there is no evidence to suggest that they are prohibited such as beneficial foods and drink, animals, plants or other lifeless substances that can be benefited from. For example, a person who sees forest fruits when passing by a forest may gather and consume these fruits, provided that he does not give harm to the trees. Because the land of the forest is not anyone's private property.

2- Presumption of original freedom from liability: When a person is born, they are born sinless, innocent and without any debt. The defendant is considered innocent up until he/she is proven guilty.

- ❖ A person cannot be treated like a criminal when their suspected crime has not been proven. For example, a person who claims that another person is responsible for a crime must prove and document this claim.

3- Certainty may not be disproved by doubt: If the existence of something is definitely known then it is ruled that its existence still continues at the moment and it cannot be ruled as non-existent simply due to a suspicion. For example, people in debt will be considered to be in debt until they bring evidence proving they paid their debt.

- ❖ The person who is not for sure about performing ablution is required to perform one as a precaution. But when the person definitely remembers performing ablution but has suspicion as to whether or not he/she has nullified it, his/her ablution is considered valid.
- ❖ If someone gets lost and there is no evidence for his/her death, this *mafqud* (missing person) is considered to have the same rights as he did before he got lost, as in his property cannot be distributed amongst his heirs and also his wife cannot be considered as a widow.

7. Shar'u man Qablana (The Laws of Previous Religions)

Shar'u man qablana means the religious laws brought by the prophets before the Last Prophet Muhammad (pbuh).

Are the rulings of past Shariahs valid and binding for the ummah of Muhammad (pbuh)?

a) The rulings of the Bible, Torah and the Book of Psalms which are mentioned in the Qur'an or Sunnah of the Prophet. There is a consensus among Muslim scholars that such rules are not binding for Muslims.

b) Rulings that are mentioned in the Qur'an or in the Prophet's sayings. It is possible to classify this type of rulings into three categories:

aa) rulings about which there are evidences that they were abrogated (naskh) about Muslims. There is a consensus that these rulings are not binding for Muslims. For example, for Jewish people who went into extremes and acted cruelly, all clawed animals and the inner fats of cattle and sheep was forbidden.⁵⁶ Another example is that war booty was not being lawful for past nations but it is considered permissible to Muslims.⁵⁷

bb) Rulings that have evidence that they are also applicable for Muslims. They are considered binding for Muslims. For example as fasting was compulsory for the past religions, it is also compulsory in Islam⁵⁸; sacrificing animals was a ruling commanded only to Abraham, but it was made legal for the Muslims, too.⁵⁹

⁵⁶ Al-An'am, 8: 145-146.

⁵⁷ Al-Bukhari, Tayammum, 1

⁵⁸ Al-Baqara, 2: 183.

⁵⁹ Ibn Maja, Adahi, 3

cc) Rulings that are mentioned in the Qur'an and ahadith in which there is no sign as to whether or not it has been accepted or rejected, and also the rulings that have no evidence proving that they have been abrogated for Muslims.

- ❖ We can give this ayah as an example: **“We decreed for them (in the Torah) a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and a wound for a wound. But if a man charitably forbears from retaliation, his remission shall atone for him. And whoever does not judge by what Allah has revealed- then it is those who are the wrongdoers.”**⁶⁰ According to most Muslim jurists, verses such as these are also valid for us. The Prophet (pbuh) stated that *“There is a life for a life in retaliation (qisas)”*⁶¹ and thus made clear that the ruling of qisas also encompasses Muslims.



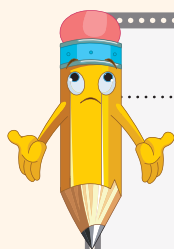
60 Al-Maida, 5: 45.

61 Al-Bukhari, Diyat, 6



EVALUATION ACTIVITIES

1. What do you understand from the term *dalil*? Explain.
2. What is Sunnah? Explain the different types of Sunnah according to the rulings they bring, and also explain the significance of Sunnah in Islam.
3. Shortly explain the types of ijma and their characteristics.
4. Explain qiyas and give examples of this.
5. What do the views of the Sahabah mean? Explain.
6. What conditions are required for a custom to be a source for a religious ruling? Write.
7. Explain the types of istihsan by giving examples.
8. Explain the principles of istishab and give examples.
9. Are the religious laws of previous religions binding for Muslims? Explain.



TRUE-FALSE QUESTIONS

1. () The Qur'an explains all legal situations with great detail.
2. () "Zakat" is considered obligatory in the Qur'an, however from which commodities the zakat should be given, the length of time and the amount of commodity to be given in regards to the zakat has not been made clear in the Qur'an.
3. () It is debated whether silent consensus is a credible dalil or not. Imam Malik, Shafi and some other Muslim jurists do not accept this type of ijma to be a source of law (dalil).



FILL IN THE SPACE QUESTIONS

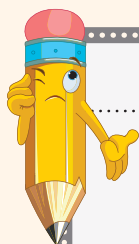
(Views of the sahaba, istishab, maslahah, urf, sadd al-dharai)

1. is something that settles in individuals with the guidance of the mind, they are words and actions that are accepted by people with good common sense.
2. The personal views and legal opinions that were related from one of the companions of Messenger of Allah is called
3. The prohibition of the things that can lead to forbidden actions is called
4. Presumption of the continuity of a ruling that was established in the past is called
5. To take something beneficial for the public is called



**UPON WHICH SOURCE OF ISLAMIC LAW ARE THE RULINGS GIVEN
BELOW BASED? WRITE IN THE SECTION ON THE SIDE**

1	A well that is impure will be considered clean when a certain amount of water is emptied out of it.	Istihsan
2	Because whisky is similar to wine it has been ruled to be prohibited.	Qiyas
3	The expenses of a rentable house will be shared amongst the home owner and renter in accordance with the general acceptance of that community.	
4	A person who does not remember whether he has experienced something nullifying his ablution is considered to be in the state of ablution.	Istishab
5	Smoking indoors should be banned because it gives harm to the majority of people.	
6	The people of Messenger of Allah have made it clear that consuming donkey meat is prohibited.	
7	A person cannot be treated like a criminal until they are proven guilty.	
8	Even though it contradicts with the general analogy, movable items such as books can be the basis of a pious foundation (waqf).	
9	So that it does not open way to fornication, being alone with a foreign woman has been deemed haram.	
10	When a person deliberately kills another person, qisas is applied to him as it was in past communities.	
11	When someone gets lost, his/her rights are protected up until an evidence for his/her death is found or until the court rules for his/her death.	
12	Companions of the Prophet (pbuh) unanimously agreed upon that pig fat was also haram, even though this is not stated in the Qur' an.	



MULTIPLE CHOICE QUESTIONS

1. Which principle is considered when the following ruling was issued; Everything is considered to be permissible, due to it being a blessing, up until evidence is found proving that it is haram?
 - A) Istihsan
 - B) Istishab
 - C) Urf
 - D) Sadd al-Dhara'i
2. Given as an example for the principle of istihsan, what is the name of the fixed-term sale of a commodity in exchange for upfront money?
 - A) Salam contract
 - B) Deposit
 - C) Interest
 - D) lost property found
3. "With the change of time, place and conditions, it is inevitable that the fatwas based on them also change" which one of the following choice is most related to this principle?
 - A) Ijma'
 - B) Sunnah
 - C) 'Urf
 - D) Qiyas
4. Which mujtahid gives special value to using the customs of the people of Medina as a source of law?
 - A) Imam Abu Hanifa
 - B) Imam Malik
 - C) Imam Shafii
 - D) Imam ibn Hanbal
5. For the sake of public good, the principle "From two evils, the lesser evil may be preferred" (article 29) has been established. What does this statement mean?
 - A) In order to remove general harm, specific harm is preferred.
 - B) Needs can be perceived as a necessary situation.
 - C) The option that is less wrong should be chosen out of two wrongs.
 - D) Rulings are set according to customs.
6. It is not considered acceptable in Islam for the government to establish a gambling system in order to improve the country. Because in this case, there is a maslahah that contradicts with the religious ruling. What is this maslahah called?
 - A) al-Maslahah al-Mursala
 - B) al-Maslahah al-Tahsin
 - C) al-Maslahah al-Mu'tabara
 - D) al-Maslahah al-Mulgha

CHAPTER 3

ISLAMIC FAMILY LAW

CONTENTS

- A. THE FUNDAMENTAL CHARACTERISTICS NEEDED TO BE FOUND IN THE FAMILY
- B. THE BENEFITS OF MARRIAGE
- C. MATTERS NEEDED TO BE PAID ATTENTION BEFORE MARRIAGE
- D. THE IMPEDIMENTS OF MARRIAGE
- E. THE ROLE AND AUTHORITY OF THE GUARDIAN IN MARRIAGE
- F. INVALID MARRIAGES IN ISLAM
- G. MATTERS THAT SHOULD BE KNOWN ABOUT A MARRIAGE CONTRACT AND WEDDING CEREMONY
- H. MAHR (DOWRY)
- I. NAFQA (ENSURING THE MAINTENANCE OF THE FAMILY MEMBERS)
- J. UNDERTAKING THE RESPONSIBILITY OF UPBRINGING THE CHILDREN (HIDANA)
- K. THE WOMANS OBEDIENCE TO HER HUSBAND AND ITS LIMITS
- L. THE TERMINATION OF MARRIAGE (DIVORCE)
- M. TYPES OF DIVORCE
- N. IDDAH AND ITS CONDITIONS

PREPARATORY WORKS

1. Can the members of a society achieve peace and happiness without the existence of the institution of family? Talk about it.
2. What kind of problems could there possibly be in a society in which fornication has become common? Research.
3. Make a research about the verses and sayings of the Prophet (pbuh) on marriage.
4. Learn from your elders husband and wife's rights and responsibilities resulted from marriage?
5. Find the meaning of the terms nikah, nafaqa, mahr, talaq, muhalaa, and tafrik.

A. THE FUNDAMENTAL CHARACTERISTICS NEEDED TO BE FOUND IN THE FAMILY

Man and woman are created in a state with a desire towards each other and family is the institution that brings man and woman together within legitimate limits. It is an institution which brings peace to their heart and tranquility to their body. Allah Almighty points out that the peace and happiness arising from love and trust in the family is evidence of His greatness: **“And one of His signs is that He created mates for you from yourselves that you may find rest in them, and He put between you love and compassion; most surely there are signs in this for a people who reflect.”**¹

New generations will learn these values in the family environment. Therefore, societies must have stable family structures in order to ensure the development and proliferation of certain qualities such as love, respect, helpfulness, and interdependency.

Islam has required some principles from the families that Muslims are going to start. Within the framework of these principles, the main characteristics required to be found in a Muslim family are as follows:

1. According to Islam, the family first and foremost depends on a legitimate marriage contract.

Islam encourages marriage, which is stated in the Holy Qur'an as follows: **“And marry those among you who are single and those who are fit among your male slaves and your female slaves; if they are needy, Allah will make them free from want out of His grace; and Allah is Ample-giving, Knowing.”**²

Allah's Messenger (pbuh) stated that while addressing the young: *“Marriage (nikah) is part of my sunnah, and whoever does not follow my sunnah has nothing to do with me. Get married, for I will boast of your great numbers before the nations. Whoever has the means, let him get married, and whoever does not, then he should fast for it will diminish his desire.”*³

It has also been stated in another hadith: *“In all of your marriages there is the reward of charity.”*⁴

Three people from the Companions asked the wife of the Holy Prophet -peace be upon him - about his nightly prayers. After obtaining information of this, they regarded their own prayers not sufficient. Upon this, the first of the Companions decided to “continuously perform the nightly prayers,” the second “to continuously fast,” and the third decided “to remain distant from women and to never marry.” Upon being informed of these discussions, the Prophet of Allah stated, *“What has happened to these people that*



1 Al-Rum, 30: 21.

2 Al-Nur, 24: 32. ; For other verses related to marriage see al-Baqara, 2: 102, 221, 228, 230, 232, 235; al-Nisa, 4: 4, 5, 19, 22-26; el-A'raf, 7: 189, 190; al-Nur, 24: 3, 32, 33; al-Rum, 30: 21; al-Ahzab, 33: 37; al-Mumtahina, 60: 10-12

3 Ibn Maja, Nikah, 1; al-Bukhari, Nikah, 2,3

4 Muslim, Zakat, 52; Abu Dawud, Tatawwu', 12, adab, 160; Ahmad ibn Hanbal, V, 167, 168

they say so and so, whereas I observe prayer and sleep too; I observe fast and suspend observing them; I also marry women? And he who turns away from my Sunnah has no relation with Me.”⁵



Islam, the religion that forbids fornication, has given permission for a man to marry up to four women provided that he treats them justly. But Islam encourages monogamous marriage: **“And if you fear that you cannot act equitably towards orphans, then marry such women as seem good to you, two and three and four; but if you fear that you will not do justice (between them), then (marry) only one or what your right hands possess; this is more proper, that you may not deviate from the right course.”⁶**

In Islam, the permission for a man to be able to marry up to four women is seen as a necessity. It needs to be based on the following legitimate reasons:

- The significant decline of the male population after war,
- The man having to stay far away from his spouse for a long time due to work obligations and also the struggle he deals with in keeping his inner self under control when he is in another country,
- Women who are aware of men’s weaknesses wanting to become close to men of wealth and power.
- The special circumstances of women, infertility and other similar reasons.



Under which circumstances can a man marry a second wife? Discuss in classroom.

2. The relationship between husband and wife is based on the principles of love, respect, and kind family relationship.

Allah Almighty states that the institution of family must be based on the principle of “getting along well.” He expresses in a verse: **“And live with them (spouses) in kindness. For if you dislike them - it may be that you dislike a thing and Allah brings through it a great deal of good.”⁷**

During his Farewell Pilgrimage our Prophet - peace be upon him - stated, *“You have rights over your women, and your women have rights over you. Your rights over women are; her not allowing anyone else to lay in your bed and not giving consent for people whom you dislike to come into your home. Be careful! Their rights over you; for you to treat them with kindness and affection regarding the matter of their eating and dressing.”⁸*

Our Prophet commanded believers to treat their women kindly in his various sayings, and he described the husband who treats his wife kindly as a “propitious person.” *“The best of Muslims in terms of faith are the ones who are the best in terms of good morality. The most virtuous of you is the one who treats their family with virtuousness.”⁹*

5 Muslim, Nikah, 5; al-Nasai, Nikah, 4; al-Darimi, Nikah, 3; Ahmad b. Hanbal, II, 158, III, 341, 359, V, 409

6 Al-Nisa, 4: 3.

7 Al-Nisa, 4: 19.

8 Muslim, Hajj, 147

9 Ibn Maja, Nikah, 50; al-Darimi, Nikah, 55

3. Spouses do not have the right to agonize and oppress one another.¹⁰ *“Fear Allah on the matter of your women. There is no doubt that they are your helpers. You have gotten them as a trust from Allah.”*¹¹

INFORMATION BOX

Spouses who have decided to live together for a lifetime must know the value of one another, they must abide by the laws of Islam. They must do this within mutual understanding and be willing to make sacrifices in order to to gain Allah's pleasure.

The Holy Prophet always treated his spouses in the best manner. He always had a smile on his face and always spoke to them with kind words. He would often compliment his family members. Aisha (may Allah be pleased with her) narrated a race in which she and the Prophet competed: *“The Messenger of Allah (pbuh) had a foot race with me and I surpassed him. This had occurred when I had been slim. We raced again later on, at a time when I gained some weight, however this time He surpassed me.”*¹²

4. The relations between the children and parents are founded upon the basis of mutual love and respect.

The Holy Prophet - peace be upon him - would treat his children, grandchildren, and the children of the Companions with compassion and He always was merciful towards them. He would also encourage his Companions to act in this way.

According to a report narrated by Aisha (may Allah be pleased with her), an Arab man came to the Messenger of Allah and said; “You love and kiss little children, whereas we do not kiss them.” The Prophet in return said, *“What can I do if Allah Almighty has removed the mercy out of your hearts?”*¹³

According to what had been related from Abu Hurayra (r.a.), an incident similar to this one had occurred as follows; one day the Prophet had kissed his grandson Hasan: Al-Akra b. Habis saw this and said, “I have ten children, but I never kiss any one of them”: The Prophet looked at him and said, *“The one who does not treat with mercy will not be treated with mercy.”*¹⁴

The mother and father must treat their children justly: *“Whom ever has two daughters and does not kill them, belittle them, and does not prefer to have sons instead of them, Allah will place them in Paradise.”*¹⁵

Children must show their parents the respect they deserve. This is especially important when the parents are in their elder years: **“Your Lord has enjoined you to worship none but Him, and to show kindness to your parents. If either or both of them attain old age in your dwelling, Show them no sign of impatience, nor rebuke them; but speak to them kind words. Treat them with humility and tender-**

¹⁰ Abu Dawud, Sunnah, 14

¹¹ Abu Dawud, Manasik, 56

¹² Ibn Maja, Nikah, 50

¹³ Al-Bukhari, Adab, 18

¹⁴ Al-Bukhari, Adab, 18, 27

¹⁵ Abu Dawud, Adab 130

ness and say: **‘Lord, be merciful to them. They nursed me when I was an infant.’**¹⁶ However, it should not be forgotten that obeying the orders given by other people is only acceptable when these orders do not conflict with Allah’s commands and prohibitions. When obeying parent’s requests, this principle should not be forgotten.

So long as it is not an act of disobedience towards Allah, obeying the mother and father is considered to be compulsory. However, the children do not have to obey the mother and fathers’ commands and prohibitions if they are ordering them not to perform the obligatory acts of worship such as prayer and fasting or not to follow the rules of modesty and cover themselves. Thus, it is commanded in a verse as follows: **“We have enjoined on man kindness to parents; but if they strive to make you join with Me that of which you have no knowledge, then obey them not. Unto Me is your return and I shall tell you what you used to do.”**¹⁷

Of all people, the mother and father are the people who deserve most to be served and shown respect to. Once the Messenger of Allah was asked which deed was the most virtuous of them all and to this, he said *“ritual prayer that is performed on time”* when he was asked what is the second most virtuous deed he answered *“kindness to the mother and father (birr).”*¹⁸



A man came and said, “O the Prophet of Allah which person is the most entitled to the best of my company? Who deserves most my getting along well with, my love and care?” he asked. The Prophet (pbuh) answered, *“Your mother!”* The man then asked, “Then who?” The Prophet (pbuh) replied, *“Your mother!”* The man once again asked, “Then who?” Allah’s Messenger once again replied, *“Your mother!”* The man asked once again, “Then who?” For his fourth answer Allah’s Messenger then said, *“Your father.”*¹⁹

The Messenger of Allah (pbuh) made clear in many of his sayings that cutting off ties with the mother and father is considered to be of the great sins. *“There are three types of people that cannot enter Paradise: The person who does not obey the rulings of the mother and father; the person who loves alcohol; and the person who persistently holds their good deeds over others.”*²⁰

5. The members of the family should have a strong faith in Islam and do good deeds.

In this matter, Islam has given the responsibility to the head of the family. Our Prophet - peace be upon him - said, *“The best legacy the father can leave his child is that of good morality.”*²¹ The mother and father who pay attention to this hadith must pay attention in raising their children as people with good morals and manners.

The parents should raise their children according to the teachings of Islam and they should prepare them for the afterlife. It is stated in a hadith, *“Every child that is born is born with the nature of Islam. The mother and father will later turn them into a Jew, Christian, or a fire-worshipper.”* After Abu Huraira related the hadith above he read the following verse, **“O Muhammad! So direct your face toward the religion,**

16 Al-Isra, 17: 23.

17 Al-Ankabut, 29: 8.

18 Muslim, Iman, 137

19 Al-Bukhari, Adab 2; Muslim, Birr, 1

20 Al-Nasai, Zakat, 69

21 Al-Tirmidhi, Birr 33

inclining to truth. (Adhere to) the fitrah of Allah upon which He has created (all) people. No change should there be in the creation of Allah. That is the correct religion, but most of the people do not know.”²²

6. Importance must be given to the child's education.

Islam gives great importance on the matter of raising a propitious child. Allah Almighty states, **“O you who believe! Save yourselves and your families from a fire whose fuel is men and stones.”**²³ After this verse was revealed, Umar (r.a.) said “O Messenger of Allah! We know that we can protect ourselves from the punishment of Hell fire by following the rulings of Allah and His Messenger. However, we do not know how we will protect our spouses and children?” The Messenger of Allah said, *“If you order them to follow Allah's orders and tell them to avoid Allah's prohibitions, this action of yours will be a means to protect them from Hell fire.”*

Everyone is responsible for the people who are under their management. Allah's Messenger stated, *“All of you are guardians and responsible for your wards and the things under your care. The Imam (i.e. ruler) is the guardian of his subjects and is responsible for them and a man is the guardian of his family and is responsible for them. A woman is the guardian of her husband's house and is responsible for it. A servant is the guardian of his master's belongings and is responsible for them.”*²⁴

The mother and father are the best role models in showing their children the right behavior of good morality. Thus, Allah Almighty states, **“Enjoin prayer on your family (and people) and be diligent in its observance.”**

The Qur'an has summed up the qualities of a good Muslim and a social identity that is expected from a child to have in the advice given by Luqman (pbuh) to his son: **“O my son, establish prayer, enjoin what is right, forbid what is wrong, and be patient over what befalls you. Indeed, [all] that is of the matters [requiring] determination. And do not turn your cheek [in contempt] toward people and do not walk through the earth exultantly. Indeed, Allah does not like everyone self-deluded and boastful.”**²⁵

INFORMATION BOX

The Prophet stated that virtue and blessings for people can be found in these three things: “When humans die their book of deeds gets closed. Due to three reasons their book of deeds will remain open: Continuous charity (sadaqa Jariyah), knowledge that is benefited from, and a virtuous child with good morals.” (Tirmidhi, Ahkam, 36).

22 Al-Rum, 30: 30.

23 Al-Tahrim, 66: 6.

24 Al-Bukhari, Jum'a, 11

25 Lokman, 31: 15-19.

B. THE BENEFITS OF MARRIAGE

1. It enables the continuation of the Muslim generations:

Our Prophet has encouraged marriage in his many sayings, and he stated that he will boast with the greatness of the number of his people. Allah's Messenger - peace be upon him - said, *"Marry women who are Wadud (very loving) and Walud (very fertile), for I will boast of your large population before the other nations."*²⁶

Allah Almighty states in a verse: **"And those who say: Lord, give us joy in our spouses and our children, and make us examples to those who fear You."**²⁷ This shows us that the most important objective of marriage is to bring about moral generations.

2. It generates a peaceful society and closes the gates for illegal relationships:

Just as marriage protects the individual, it also protects society. When individuals become virtuous, then the community will also become virtuous and righteous. Our Prophet - peace be upon him - said of this topic that *"Upon whomever Allah bestows a righteous woman, He has helped him with half his religion. As for the matter of the other half (of his religion) he should fear and be wary of Allah."*²⁸

With marriage the individuals take care of their carnal desires which exist in their nature through licit ways. By attracting our attention to this our Prophet - peace be upon him - said that:

*"If someone whose faith and morals impresses you asks for your daughter's hand in marriage, let them marry. If you do not do this, mischief and corruption will emerge on earth."*²⁹

In a society in which marriage is not common or it is not easy to get married, the occurrences of perversion will increase and people's honor and purity will be threatened. Many families will be destroyed and many families will live in a state of unrest.

3. It gives a person a sense of thrust and peace:

People are in need of other people with whom they can share their happiness and sorrows.

The love and tendencies of man and woman towards one another gain an entirely different dimension thanks to marriage. In fact, our Prophet - peace be upon him - stated that, *"there is nothing that increases love between those who love each other more than the marriage does."*³⁰

The man and woman are in need of each other and each of them cannot continue their lives contentedly without the other. This is expressed in the Qur'an as follows:

"They are clothing for you and you are clothing for them."³¹

Also, one of the wisdom of marriage in Islam is that the man and woman find peace in one another. This is stated in the Qur'an: **"And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought?"**³²

4. It is an opportunity for spouses to gain spiritual rewards:

In Islam, the marriage agreement is considered to be a legal procedure and also an act of worship.

26 Abu Dawud, Nikah, 3/2050; al-Nasai, Nikah, 11

27 Al-Furqan, 25: 74.

28 Hakim, Mustadrak II, 175

29 Al-Tirmidhi, Nikah, 3

30 Ibn Maja, Nikah, 1

31 Al-Baqara, 2: 187.

32 Al-Rum, 30: 21.

Matters in marriage such as the man taking care of his wife's needs, and the woman carrying out her husband's acceptable requests and taking care of their children are all a means of gaining spiritual rewards. In addition, marriage is also a means of gaining spiritual rewards because it is a way of taking care of the carnal desires through licit ways.

In addition to the benefits that have already been discussed above, marriage has many other benefits. Some of them are as follows:

- Preventing the conception of children out of wedlock,
- The correction and improvement of the negative attributes of the inner self,
- Experiencing the love of children,
- Being taken care of in old age,
- The increase in the number of relatives,
- Becoming stronger by becoming more populated ...

C. MATTERS NEEDED TO BE PAID ATTENTION BEFORE MARRIAGE

Once a promise has been given, unless there is a very important reason, it should not be broken. Allah Almighty states, **“Keep your promises; you are accountable for all that you promise.”**³³

- ◆ It is permissible to propose to a woman who is not married and who is not in the waiting period (iddah).
- ◆ It is prohibited to propose to someone else's fiancé. It is stated in a saying of the Prophet: *“One of you should not make a sale on top of your brothers' sale. And also he should not propose to someone to whom his brother has already proposed.”*³⁴
- ◆ When someone consults other people about the person whom he/she is planning to get married, it is obligatory for the person consulted to tell the deficiencies, if there is any, of the prospective wife/husband.
- ◆ It is not allowed for a female to socialize freely and be alone with a male who is not one of her close relatives with whom she is not allowed to get married. Our Prophet - peace be upon him - stated, *“A person should not be alone with a woman with whom he is allowed to get married. Otherwise, the third among them will be the Satan. However it is an exception when one of their close relatives is with them.”*³⁵
- ◆ *Provided that there is a third person with them and that it is in a place open to everyone, it is possible for prospective spouses to look at each other's faces, talk about marriage, and to learn the opinions of the other on this matter. Mughira ibn Shu'ba (r.a.) wanted to marry a woman. The Prophet - peace be upon him - said to him; “Go and see her. Because seeing each other will help you both in warming up to each other.”*³⁶

Marriage is an agreement that brings together a male and a female, who had no impediments to get married, in order for them to share their lives with one another and also to continue the upbringing of generations. This is the reason the man should not act according to the desires of his inner self when looking for a life partner. There are factors that he must take into consideration:

33 Al-Isra, 17: 34.

34 Al-Bukhari, Buyu', 58

35 Al-Bukhari, Nikah, 111, 112

36 Abu Dawud, Nikah, 18

a) **When choosing a wife, the one who is religious and moral should be preferred.** It is stated in a saying of the Prophet: “A woman is married for four things; her wealth, her family status, her beauty, and her religion. So you should try to marry the religious woman, so that you may enjoy welfare.”³⁷ The Messenger of Allah has pointed out the drawbacks of marrying women only for her beauty or wealth:



“Do not marry women only for their beauty; it might be that their beauty could be a reason for them to decline in morality. Also do not marry them only for their property, because their property can open the way to their rampancy. Marry them because of their piety. There is no doubt that a ragged-clothed female slave who is pious is much superior to the others.”³⁸

b) **Families that are of virtuous ancestry and descent should be preferred.** This is why it is reprehensible to marry a woman whose father is unknown or to marry a woman who has fallen down the wrong path. Allah Almighty states, “**The fornicator does not marry except a [female] fornicator or polytheist, and none marries her except a fornicator or a polytheist, and that has been made unlawful to the believers.**”³⁹ In marriage, one should strive to choose a partner who is not closely related but rather is a stranger to the family in order to prevent the possible problems such as blood incompatibility, birth defects, and others. Although it is permissible to marry the daughter of the uncle and aunt (daughter of the father’s brother and sister, daughter of the mother’s brother or sister), ties between the family may get damaged if a disagreement or divorce takes place in the marriage.

c) **One should try to marry a woman who radiates joy, is favorable, obedient, virgin, and fertile.** It is stated in a hadith: “*Prefer virgin girls for marriage. Because they are pleasant to be spoken, satisfying, and they will be content with much less.*”⁴⁰ “*Marry a fertile woman who can love her husband ...*”⁴¹ It is also stated in another hadith as follows: Our Prophet was asked; “Which woman is the most virtuous?” The Messenger of Allah replied to this, “*When her husband looks at her, she gives him happiness and joy, if he asks something, she obeys. She protects her husband’s honor even when he is not home.*”⁴²

D. THE IMPEDIMENTS OF MARRIAGE

All of the impediments of marriage have been mentioned in the Qur’an as follows: “**Prohibited to you [for marriage] are your mothers, your daughters, your sisters, your father’s sisters, your mother’s sisters, your brother’s daughters, your sister’s daughters, your [milk] mothers who nursed you, your sisters through nursing, your wives’ mothers, and your step-daughters under your guardianship [born] of your wives with whom you have lain.**”⁴³ In this verse, it is made clear that three groups of relatives constitute a permanent impediment of marriage.

37 Al-Bukhari, Nikah, 15

38 Ibn Maja, Nikah, 6

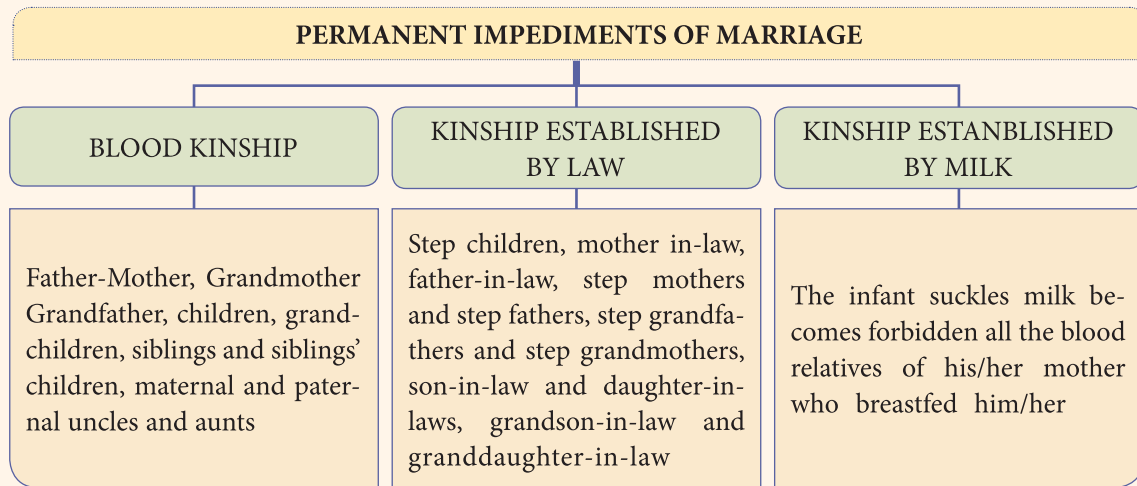
39 Al-Nur, 24: 3.

40 Ibn Maja, Sunan, I, 597

41 Abu Dawud, Nikah, 3

42 Ahmad b. Hanbal, II, 251, 432

43 Al-Nisa, 4: 23.



Permanent Impediments of Marriage

The following are the impediments to marriage that continue for a lifetime:

1- Blood Kinship: A person cannot marry his mother, grandmother, daughter, grandchildren, siblings and their children and the sister of their mother and father. The sisters of the grandfathers, who are considered to be great-aunties, are also considered to be within the limits of the prohibited. When we come to the female, the same exact situation applies to her but in relation to her male relatives. For instance, she is not allowed to marry her father, grandfather, son, grandson, brother and the children of her brother.

2- Kinship through Marriage: The kinship that is established by marriage continues until the time of death. We can categorize kinship through marriage for a male into four groups. a. Stepdaughters (the spouse's children from her former marriage). b. Mothers-in-law c. The wives of the father and grandfather. d. The wives of the son or grandsons. Kinship through marriage for the female is the opposite of the males.

3- Kinship through Milk Suckling: The baby who suckles milk becomes like the real child of the female who breastfed him/her. Marriage to the milk mother's relatives is prohibited for the milk suckling baby. Our Prophet – peace be upon him - said that, *"What is prohibited by birth is also made prohibited by suckling milk."*⁴⁴ A person cannot marry his/her foster mother's husband, foster siblings (children who also suckled from the foster mother), all the children, and grandchildren that suckled milk from the foster mother and all of their spouses, the mother and father of the foster mother and her husband, the siblings of the foster mother, the siblings of the foster mother's husband. However, the brothers of wet-nursed baby can get married to the daughters of the woman who wet-nursed the baby. In like manner, the sisters of a wet-nursed baby can get married to the sons of the woman who wet-nursed the baby. Because there is no kinship established between them.

There are three conditions for the establishment of milk-kinship:

1- The baby who suckles milk must be younger than two years old. *"Kinship by suckling is only formed when the milk is suckled within the first two years of the child's life."*⁴⁵

2- The baby must be breastfed at least five separate times.

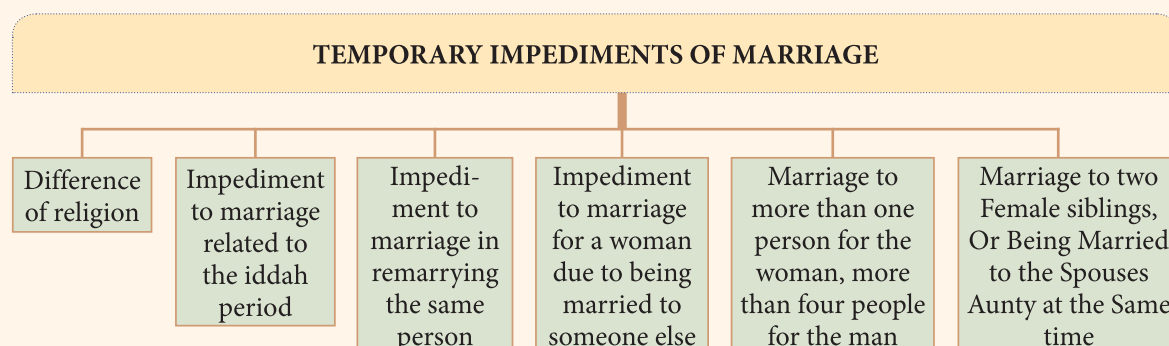
3- In every one of these occasions of breastfeeding the infant, milk should reach his/her stomach.

If any one of these conditions is not met, there will be no milk-kinship established.

⁴⁴ Al-Bukhari, Shahadat, 7; Muslim, Rada', 1

⁴⁵ Al-Bukhari, Nikah, 21

(According to Hanafi School, to establish milk kinship, it is enough to have one satisfactory breast-feeding and to have the milk reach the infant's stomach. According to the Maliki madhhab, if the child takes the nipple into his/her mouth but it is not certain whether or not the baby actually suckled on it, it will be considered that kinship through milk has been established just to be cautious.)



Temporary Impediments of Marriage

The temporary impediments to marriage are these:

1- Difference of religion: The Muslim man and woman can in no way marry a polytheist.

The Muslim man is only allowed to marry People of the Scripture, in other words a Christian or Jewish woman. It is stated in the Qur'an: "... And [lawful in marriage are] **chaste women from among the believers and chaste women from among those who were given the Scripture before you, when you have given them their due compensation (mahr or dowry).**"⁴⁶ It is prohibited for a Muslim woman to marry a man who is a person of the Scripture.

It is prohibited to get married not only to disbelieving and idol-worshipping women except the ones from the people of the book but also to the daughters of the people of the book who are married to disbelievers or pagans.

If a disbelieving husband and wife converts together to Islam, their old marriage continues to be valid. If a man converts to Islam, his marriage to a woman from the people of the book continues to be valid. If a woman converts to Islam, but her husband rejects embracing Islam, the process of annulment of their marriage starts. If the man converts to Islam during his wife's waiting (iddah) period, their marriage continues to be valid.

If any one of the couple converts out of Islam and becomes an apostate after marriage, the process of annulment of their marriage starts. If they convert back to Islam during the waiting period, their marriage continues to be valid. If they do not convert back to Islam, their marriage becomes invalid beginning from the time of their apostasy.⁴⁷

2- The impediment to marriage linked to the iddah: When the marriage comes to an end due to death or divorce, the period of time a woman must wait to be able to get married again is called "iddah." When the marriage comes to an end due to the death of the husband, the length of iddah period that the woman must wait in order to remarry is four months and ten days. The iddah of the divorced woman is complete after she sees three menstruations. For those who do not menstruate, their iddah is considered to be three months. If the woman is pregnant at the time of her husband's death or at the time of divorce, the period of iddah she will have to wait to be able to remarry is up until the birth of her child.

⁴⁶ Al-Maida, 5: 5.

⁴⁷ Al-Nawawi, Minhaj, s.737

3- The impediment to marriage in remarrying the same person: For a woman divorced from her husband three times with *ba'in*^{48*} or *riji*^{49**} type of divorce, to be able to remarry her husband, she must first get married with another man with whom she has had a genuine marriage with and then get divorced from him. Allah Almighty states: **“If a man divorces his wife (for the third time), he cannot remarry her until she has wedded another man and been divorced by him; in which case it shall be no offence for either of them to return to the other, if they think that they can keep within the bounds set by God.”**⁵⁰

4- The impediment to marriage for a woman due to being married to someone else: This is stated in the verse: **“And [also prohibited to you are all] married women.”**⁵¹

5- The impediment to marriage of already being married to a man for the woman, and to four women for the man: It is an impediment to marriage for the woman to marry another man when she is already married. Under certain conditions, Islam has given permission to the man to marry more than one woman. However, it is forbidden for the man to marry more than four women at the same time. Allah has ordered: **“And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one of those your right hand possesses. That is more suitable that you may not incline [to injustice].”**⁵²

6- The impediment to marriage for the man to marry two siblings, or to marry the woman along with her aunty in the same marriage: It is stated in the Qur'an, **“... And [also prohibited is] for you to take [in marriage] two sisters simultaneously, except for what has already occurred.”**⁵³ Our Prophet stated, *“The wife and her aunty (sister of mother and father) cannot be put together under the same marriage.”*⁵⁴

E. THE ROLE AND AUTHORITY OF THE GUARDIAN IN MARRIAGE

a) Wali al-Mujbir (father and father's father) are the guardians who have the strongest authority. Wali al-Mujbir may compel his charge to marry. “Compel” means to marry the ones under his care (virgin girls) to a suitable match without her consent. Allah's Messenger (pbuh) stated this as follows, *“There is no marriage without (the consent of) the wali (guardian).”*⁵⁵

After reaching puberty, a boy may get married without the permission of his guardian. However, a virgin girl cannot marry herself off even if she gets the permission of her guardian. In other words, her guardian himself should conclude the marriage contract. Because women are emotional beings, they can easily be manipulated by men and this can be a source of regret for her in her future life. This matter has been clearly expressed in the sayings of the Prophet: *“If a woman marries without the consent of her guardians, that marriage will be deemed invalid, invalid, invalid.”*⁵⁶ *“The woman cannot marry off a woman. Also the woman cannot marry herself off.”*⁵⁷

48 * The type of divorce which allows the couples to get remarried with each other with new marriage contract after the first two instances of divorce.

49 ** The type of divorce which allows the couples to get remarried with each other without needing a new marriage contract after the first two instances of divorce.

50 Al-Bukhari, Talaq, 7

51 Nisa' 24.

52 Al-Nisa, 4: 3.

53 Al-Nisa, 4: 23.

54 Al-Bukhari, Nikah, 27

55 Al-Bukhari, Nikah, 36

56 Ibn Maja, Nikah, 15

57 Abu Dawud, Nikah, 19

Only father and father's father has the authority of mujbir (compelling) guardianship. Whenever the bride is a virgin, the father or father's father may marry her to someone without her permission, though it is recommended to ask her permission if she has reached puberty. A virgin's silence is considered as permission. If an adult and sane virgin requests her guardian to have her marry to a man, but her guardian marries her off to another man, her guardian has the right to do this according to the most accepted view in Shafii School. Because it is accepted that father thinks about and pays attention his daughter's rights and happiness more.⁵⁸

If a woman loses her virginity in a valid marriage or out of wedlock, she still is considered non-virgin. As for the non-virgin of sound mind, no one may marry her to another after she has reached puberty without her express permission, no matter whether the guardian is the father, father's father, or someone else. *"A guardian has no concern with a woman previously married and has no husband."*⁵⁹

It is a requirement to observe the order of authority among the guardians. Father has the highest authority in guardianship and then comes the father's father. No one may state both the proposal and its acceptance for one marriage, except the bride's grandfather. If the father's father is the guardian of both parties in a marriage contract, for example marrying his granddaughter from one of his sons to his grandson from his another son, this marriage contract is valid.

If there is no guardian from the class of mujbir guardians, then other male relatives from the group called *asaba*, i.e. father of the father's father, full brother or brother from father's side, brother's son, paternal uncle, and the sons of paternal uncle, have the authority to be the guardian.

The right of guardianship is not given to distant relatives. The guardian may delegate someone else on his behalf. If the guardian lives in a place closer than 81 km, the marriage contract cannot be concluded without his consent according to accepted view in Shafii School.

The guardian must be free, adult, sane, and Muslim (if the charge is a Muslim). One who is incapable of knowing people, insane, or not legally upright, cannot be a guardian. If a closer relative is not present or does not carry the necessary qualifications to be a guardian, the right of guardianship goes to the next relative in the above-mentioned list.

Under certain situations, the right of guardianship passes to the head of the Muslim state or to the office authorized by him. These situations can be listed as follows:

- 1- If the guardian is performing pilgrimage and in the state of ihram,
- 2- If the guardian is in jail,
- 3- If the guardian is on a long journey (farther than 81 km / 50 mile from home) and has not deputized anybody on his behalf when he is away,
- 4- If the guardian rejects to marry his charge. If a Muslim woman finds a man suitable to get married, but her guardian prevents her to marry, then she may take her case to the court. The judge may marry her to the person she wants.⁶⁰

When an orphan girl, who has neither father nor father's father, reaches the age of puberty, the head of the Muslim state marries her according to the most accepted view in Shafii School.

b) It is not appropriate for the guardian to compel his charge to marry someone that he/she does not want.

As we mentioned above, mujbir guardian (father or father's father) has the authority to marry his daughter at the age of puberty without getting her consent. However, this authority should not be abused.

⁵⁸ Al-Nawawi, Minhaj, p. 715

⁵⁹ Abu Dawud, Nikah, 25; Ahmad b. Hanbal, I, 334

⁶⁰ Dört Mezhebin Fıkıh Kitabı, vol. 5, p. 71-73

Because it is highly likely that there will be problems in such a marriage. Whereas the real purpose of a marriage is to establish a peaceful and happy family.

Marriage is a matter of heart. If a girl wants to get married, but the prospective groom is too poor to pay the dowry or there is hostility between the guardian and his daughter, the marriage contract may be concluded just by her consent. Allah's Messenger (pbuh) said, *"A woman without a husband has more right to her person than her guardian and the father of a virgin should ask her permission about herself."*⁶¹

If a woman asks her guardian to marry her to a suitable candidate, but her guardian refuses her three or more times, he is considered to become fasiq (not legally upright) and loses his right of guardianship. This right passes to the next relative.

If the guardian marries his daughter to someone that she does not want, she has right to go to the court. Aisha (r.anha) explains the Prophet's practice in regards to girls being forcibly pushed into marriage: *"Al-Hansa (r.anha), the daughter of Hidam who is from Ansar, came to Aisha (r.anha) and said; 'My father has married me to his sibling's son in order to enhance the family's reputation. But I do not want this marriage' she said. Aisha said to her; 'Wait here until the Messenger of Allah - peace be upon him - comes.'" When the Prophet came, Aisha explained the situation to him. He then called the father of the girl and gave the girl the right of choosing whether or not she wants to marry. After this, the woman said, "O Messenger of Allah! I have accepted the marriage that my father has arranged. However, with this action of mine, I wanted to let all women know that fathers do not have such authority when it comes to marriage."*⁶²

c) If the girl and boy who get married are not suitable match (kafaah), the guardian may go to the court to annul the marriage.

The term kafaah is used when the potential groom is suitable match to the bride. Equality is only looked for in respect to piety and being free from defects that hinder the person's freedom of choice. A man being at the same level of a woman is especially important in order for the woman to be protected. A man who commits sins, who does not obey the religious principles, and who does not possess moral values is not considered to be equal to the virtuous and modest woman.

The guardian should strive to marry his daughter when there is suitable match to her. The Messenger of Allah (pbuh) told Ali (r.a.): *"Do not delay three things: The prayer when it is time, a funeral when it is ready and marrying a girl when you have found her match."*⁶³

Suitability in marriage concerns the following aspects:

1- Being free from deficiencies: Disabled and one who is sexually incompetent cannot be suitable to a girl who is free from such deficiencies. If such deficiencies happens after marriage due to unexpected circumstances such as having an accident, it does not give the guardian to take this matter to a court for the annulment of marriage.



61 Abu Dawud, Nikah, 25

62 Ahmad b. Hanbal, VI, 368

63 Al-Tirmidhi, Salat, 13

2- Being chaste (pious and honorable): A man who commits sins, who does not obey the religious principles, and who does not possess moral values is not considered to be equal to the virtuous and modest woman.

3- Freedom: A slave is not a suitable match to a free woman.

4- Vocation: A man who has a vocation which considered lower according to customs compared to the vocation of the girl is not considered a suitable match. According to accepted view in Shafii School, being wealthier is not taken into account in the matter of kafaah.

5- Lineage: A man who comes from a lower lineage is not suitable match to a girl coming from a more respected lineage.

F. INVALID MARRIAGES IN ISLAM

Marriage contracts which do not carry one or more of the conditions required to be valid and legitimate according to Islamic Law are deemed invalid. The following are of this type of marriages:

1- Mut'a Marriage:

This is the type of marriage that a man and woman are married for only a fixed period of time. This type of marriage used to be lawful in the early years of Islam due to the necessities of the public but then it has been prohibited by the Prophet (pbuh). It was related from Sabra b. Ma'bad (r.a.): *"The Messenger of Allah (pbuh) prohibited the mut'a marriage at the time of his Farewell Pilgrimage."*⁶⁴

The mut'a marriage is an abrogated type of marriage. When a man asks from a woman: "I would like to benefit from you for a certain period of time in return for such and such amount of money", and if the woman accepts this offer, a "mut'a marriage" is established. Our Prophet - peace be upon him - prohibited

the mut'a marriage: *"O people! I had given you permission regarding contracting of temporary marriage with women. Behold, it is forbidden from this very day of yours to the Day of Resurrection, and he who has given something (as a dower) should not take it back."*⁶⁵



2- Secret Marriage:

This type of marriage which is concluded usually by young people who do not carry all the requirements of marriage is also invalid. Today some Muslims secretly get married to their boy /

girl friend at school in order to have closer relationship. This is in fact a type of adultery. Because even though there is a marriage contract in appearance, but such couples do not inform their guardians and get their consent. This type of secret marriage causes irrevocable damages in family life.

64 Al-Bukhari, Megazi, 38

65 Muslim, Nikah, 22

3- Shigar Marriage:

Shigar marriage is when a man marries his daughter to someone provided that the other one also gives his daughter to him in marriage. This type of marriage is prohibited by the Messenger of Allah (pbuh). The women in this type of marriage do not receive any mahr (dowry), and also each of the men are able to marry the woman who is under the guardianship of the other without giving any dowry. When this kind of marriage is carried out, it must be annulled and it will not be valid.

4- Hulla Marriage or Tahlil:

This is the type of marriage where a man agrees to marry a woman only to make it permissible for her to marry her ex-husband whom she has already divorced three times. This type of marriage will be annulled. Those who enters a hulla marriage contract stipulate to get divorce after consummation of marriage. Those who enter such an arranged marriage contract have been cursed by the Prophet (pbuh). The following has been related from Abdullah b. Masud: *“The Messenger of Allah (pbuh) has cursed the one who carries out the contractual hulla marriage and also the one who takes part in it.”*⁶⁶ It has been stated in another hadith: *“Shall I not tell you of a borrowed billy-goat?” “Yes, the Messenger of Allah” they all said. The Prophet (pbuh) said, “He is al-muhallil. May Allah curse al-muhallil and al-muhallal lahu. [The muhallil is the one who marries a woman and divorces her so that she can go back to her first husband, and the muhallal lahu is the first husband].”*⁶⁷

G. MATTERS THAT SHOULD BE KNOWN ABOUT A MARRIAGE CONTRACT AND WEDDING CEREMONY

Marriage is a contract which allows the couple to have a legitimate relationship and family life. It is a recommended to get married in order to have a chaste life and have children. Allah's Messenger (pbuh) said, *“Marriage is my tradition, whoever keeps away therefrom is not from my community. Get married, because I will be proud of the large numbers of my followers compared to the followers of other prophets.”*⁶⁸

The Integral Parts of a Marriage Contract

1- The Spoken Form: Marriage contract can be concluded only by making an offer (ijab) and accepting (qabul) it. The first integral is the explicitly stated spoken form comprising a spoken offer by the guardian and its acceptance by the groom. Its necessary conditions are the same as those of valid sale, the form being valid in languages other than Arabic even when one is able to speak Arabic. The spoken form is not valid if allusive. Nor is it valid without a statement from the guardian that effect it namely “I marry you to my daughter and an immediate spoken acceptance by the groom, namely “I marry her,” or “I accept her marriage.”

2- Zawj (the groom): Husband must be Muslim. He can be neither one of the close relatives of the prospective bride nor in the state of ihram in a major or minor pilgrimage.

3- Zawjah (the bride): The bride must be free from the impediments of marriage such as being in the state of ihram or married to another man.

4. Guardian: The fourth essential part of a marriage contract is the bride's guardian because a woman may not conduct her own marriage. Ibn Majah relates that the Prophet (Allah bless him and give him

66 Al-Tirmidhi, Nikah 27; al-Nasai, Zinah 25

67 Al-Tirmidhi, Nikah 41, 42; al-Nasai, Talaq, 3416.

68 Al-Bukhari, Nikah, 2, 3; Ibn Maja, Nikah, 1

peace) said, “Let no woman marry a woman to another or marry herself to another.” If a woman has no guardian, the Islamic magistrate appointed by the Muslim state becomes her guardian. This is expressed in one of the Prophet’s sayings as follows, “*The sultan (man in authority) is the guardian of one who has none.*”⁶⁹

5. Two witnesses: There should be two witnesses present other than the guardian when contacting the marriage. In this respect, Allah’s Messenger (pbuh) said, “*A marriage contract without the guardian and two witnesses is void.*”⁷⁰ The witnesses must be free, male, upright, and have sound hearing and eyesight.



EXAMINE

What conditions are required in order for a marriage to be valid according to Islamic Law? Examine the different opinions of madhabs and state the ones that are common.

The Outcomes of a Marriage Contract

1- Groom becomes responsible to pay dowry to his bride, because Allah Almighty commands in the Qur’an, “**And give the women (on marriage) their dower as a free gift...**”⁷¹

2- Each spouse attains the right to benefit from the other legitimately.

3- The kinship ties becomes established. The lineage of the children who are born within a normal period of pregnancy will be attributed to the husband. It is stated in a hadith, “*Child belongs to the owner of bed.*”⁷²

4- Husband becomes responsible to provide the provisions of his wife and children. This is expressed in the Qur’an as follows, “**He (father) shall bear the cost of their (mother) food and clothing on equitable terms.**”⁷³

5- Man married to more than one wife becomes responsible to treat his wives equally. Our Prophet (pbuh) said in this regard, “When a man has two wives and he is not just between them, he will come on the Day of Judgment with one side drooping.”⁷⁴

6- Inheritance. When one of the spouses dies, the other becomes the heir of the deceased spouse.

Marriage Ceremony

It is a Sunnah to deliver a speech, to pray for the bride and the groom, to announce the marriage, and to have a ceremony. Allah’s Messenger (pbuh) said, “Announce this marriage, and beat the sieve (tambourine) for it.”⁷⁵

Wedding ceremonies should be entertaining and joyous occasions. The Messenger of Allah - *peace be upon him* - said that, “Announce the marriage. Perform them at the masjids and play the tambourine afterwards.”⁷⁶ There is no harm to have some fun within the legitimate boundaries of Islam. It is more appropriate to the spirit of Islam for the men and women to enjoy the pure entertainment provided that it is carried out in gender segregated groups. Hymns, poems, instrumental and light music can be listened to at the wedding ceremony.

69 Abu Dawud, Nikah, 20; Ibn Maja, Nikah, 15

70 Al-Daraqutni, Sunan, 3, 227; Ibn Hibban, Sahih, no. 1247

71 Al-Nisa, 4: 4.

72 Al-Bukhari, Buyu’, 3

73 Al-Baqara, 2: 233.

74 Al-Tirmidhi, Nikah 41

75 Ibn Maja, Nikah, 20; al-Tirmidhi, Nikah, 6.

76 Al-Tirmidhi, Nikah, 6.

Aisha (r. anha) arranged a marriage for a female relative of hers among the Ansar. The Messenger of Allah (pbuh) came and said, *“Have you taken the girl (to her husbands house)?”* She said, “Yes.” He said, *“Have you sent someone with her to sing?”* She said, “No.” The Messenger of Allah (pbuh) said, *“The Ansar are People with romantic feelings. Why don’t you send someone with her to say, ‘We have come to you, we have come to you, may Allah bless you and us?’”*⁷⁷

It is permissible to express happiness and spend joyful time due to marriage. However, it is not permissible to have entertainment activities which lead to sinful acts.



The entertainment and the food served during the ceremony should be in accordance with Islamic principles. The Messenger of Allah has made it very clear that a Muslim should not sit at a table where alcohol is being served and consumed. *“The person who believes in Allah and the Last Day should not sit at a table where alcohol is being served.”*⁷⁸ If someone is obliged to attend a wedding ceremony where prohibited deeds are committed or if it was not known about beforehand, as soon as they see the wedding ceremony (and the prohibited acts) they should distance themselves from that venue and let the people who are responsible for the wedding know about this situation.

The food served at a wedding is called “walimah”. The Messenger of Allah (pbuh) has highly recommended serving food at weddings. Thus, when the Prophet found out that Abdurrahman ibn ‘Awf (d. 32/652) was going to get married, he said to him *‘even if it means slaughtering a sheep, serve a wedding banquet.’*⁷⁹ The food served at a wedding should not be too much and showy. Thus, it is stated in a hadith: *“Giving the walima on the first day (of the wedding) is a right; it is pleasant on the second day. It is, however, a means of gaining popularity and show off to serve food on the third day.”*⁸⁰

The poor and the destitute should especially be invited to the weddings.

It is considered necessary for the invitees to accept the invitation and join it if it is possible for them to get to the venue of the walimah. *“Whoever is invited to a wedding and does not attend, they will have shown an act of rebellion against Allah and His Prophet.”*⁸¹ *“When one of you is invited to a wedding banquet, they should go.”*⁸² For the person who is invited to more than one weddings, it is best for him/her to prefer to attend the invitation of his/her relatives or close neighbors. If one of the invitations was given earlier than the others, it is more appropriate to prefer to attend the first one.

In wedding night when going to bridal chamber, one should pray Allah. Allah’s Messenger (pbuh) advised the groom to say the following supplication before sleeping with his wife, *“Bismillah. O Allah! Keep us away from Satan. Keep also the Satan away from the child that You will bestow us.”*⁸³

77 Ibn Maja, Nikah, 21.

78 Al-Shawkani, *Nayl al-Awtar*, II, 203.

79 Al-Bukhari, Nikah, 7; al-Darimi, At’ima, 28, Nikah, 22

80 Abu Dawud, At’ima, 3

81 Al-Bukhari, Nikah, 72

82 Al-Bukhari, Nikah, 71

83 Al-Bukhari, Nikah, 66

H. MAHR (DOWRY)

Mahr (dowry) are the goods and the property that are given to the woman due to the sexual gratification that will be consummated after the marriage is performed. Mahr is one of the conditions for the validity of a marriage. Mahr supports and gives the woman a sense of financial security in the case that she unexpectedly loses her husband or if he divorces her.

The Prophet (pbuh) gave great importance to the establishment of the details of the mahr. When Ali (r.a.) was marrying the Messenger of Allah's daughter Fatima, he gave her a very valuable shield called "Hutami shield" as a mahr.⁸⁴

The Prophet of Allah advised one of his Companions wanting to marry a woman to give her a gift as a mahr, but when he realized that he was poor he said *"even if it is a metal ring, look for it at home and bring it"*, when the poor Companion was not even able to find it, The Prophet married them in return for teaching what the poor man knew of the Qur'an to his prospective wife.⁸⁵

Conditions Related to Mahr

1- Mahr should be something of value. There is no maximum limit for how much the quantity of the mahr should be. It is expressed in the Holy Qur'an, **"...if ye had given the latter a whole treasure for dower, Take not the least bit of it back..."**⁸⁶ One may get married with little amounts of mahr, but it is a Sunnah not to give less than 10 dirhams as mahr.

2- Everything can be given as a mahr as long as it is something that is not prohibited to be sold and used according to Islamic law. The thing that is given to a woman as mahr should be something lawful and legitimate to be benefited from. Things that are prohibited by Islam such as wine, pig, or gambling house etc. cannot be given as mahr.

3- Mahr must not be an unknown thing or something usurped from another person.

Types of Mahr

1-) Mahr Musamma (Mahr determined by the parties): This is the type of mahr the amount of which is determined by the parties of marriage contract at the time of contract or later. Mahr determined by the parties is classified into two types in terms of being paid in advance or in the future:

a) Mahr Mu'ajjal (مَهْر مُؤَجَّل Mahr Paid in Advance): This is the type of mahr paid advance at the time of marriage contract. Some jurists consider it recommended to give at least part of mahr in advance based on the fact that Ali(r.a.) gave his armor to Fatima (r. anha) as mahr at the time of their marriage contract.

b) Mahr Muakhkhar (مَهْر مُؤَخَّر also known as Mahr Mu'ajjal مَهْر مُؤَجَّل – mahr with deferred payment): It is the type of mahr agreed to be paid a certain period of time after signing the marriage contract. It is paid in instalments or sometime in the future. In this case, bride cannot request the payment of mahr before its due date. This type of mahr turns into advance mahr in case of a divorce or death.

2-) Mahr Mithl (Mahr the amount of which determined by customs): This type of mahr is determined by taking into consideration the mahr paid to women in similar status in society. A woman's mahr mithl is determined based on the mahr paid to her close relatives. According to closeness of kinship, one should determine mahr mithl amount based on the mahr paid to a woman's sisters, cousins etc. who are at the same age, piety, beauty, intelligence, knowledge, character etc. when they are getting married. If a woman lacks any one of such desired characteristics, mahr amount is decreased accordingly.

84 Al-Nasai, Nikah, 76

85 Al-Nasai, Nikah, 62

86 Al-Nisa, 4: 20.

A Woman receives mahr mithl under the following circumstances:

- a) In situations when mahr cannot be determined clearly and when something unlawful is determined as mahr, the woman should get mahr mithl. For example, if mahr is determined as a house, or a car without specifying it, mahr mithl should be paid due to “excessive uncertainty.”
- b) If there emerges a disagreement regarding the amount of mahr, the bride gets mahr mithl.
- c) If the groom gives something usurped as mahr to the bride, mahr becomes invalid. However, the marriage contract is considered valid. In such a case, the bride is entitled to receive mahr mithl.
- d) If the parties of a marriage contract do not decide the amount of mahr at the time of signing the contract, or if they stipulate to get married without the payment of mahr, such a condition is deemed as invalid, while the contract is and the woman is entitled to receive mahr mithl.

The Amount of Mahr Paid to the Bride**1-) Complete Dowry:**

After the marriage has been consummated, the woman becomes entitled to receive the complete dowry. However, before the consummation of marriage, the dowry will not be transferred to the ownership of the bride. It is stated in the verse, **“How can you take it back when you have lain with each other and entered into a firm contract?”**⁸⁷

In the case of the death of the husband, the woman becomes entitled to the complete mahr. If the woman passes away, her dowry will be given to her heirs.

2) Half Dowry:

In the cases that the groom converts out of Islam, divorces his wife, or divorce takes place for some reason caused groom or both spouses before the consummation of marriage, bride is entitled to receive half of dowry. This is mentioned in the following verse as, **“If you divorce them before the marriage is consummated, but after their mahr has been settled, give them the half of their mahr, unless they or the husband agree to waive it. But it is more proper that the husband should waive it. Do not forget to show kindness to each other. God observes your actions.”**⁸⁸

If the whole mahr is paid in advance, the woman must give half of this mahr back to her husband.

3) Mut'a (the consolation gift):

If at the time of the marriage contract no mahr has been determined and if the man dies before its settlement or before the consummation of the marriage, there will be no need for any mahr to be paid. In this case the woman becomes entitled to the mut'a (consolation gift).

Mut'a is stated in the following verse, **“It shall be no offence for you to divorce your wives before the marriage is consummated or the mahr settled. Provide for them with fairness (mut'a); the rich man according to his means and the poor man according to his. This is binding on righteous men.”**⁸⁹ It is recommended to settle the amount of mut'a more than 30 dirhams.

If the marriage ends with the request of bride before the consummation of marriage, she is not entitled to receive mahr and in that case, it becomes obligatory for the groom to give mut'a (consolation gift) to her.

4) The Case that the mahr not being a necessity:

If the marriage agreement is not valid and if the separation has taken place before the consummation of the marriage or if they have been separated by a judge, the man does not need to give any mahr or mut'a. If the marriage ends because of something to do with the woman such as her conversion out of the religion, the woman will not be entitled to a mahr.

⁸⁷ Al-Nisa, 4: 21.

⁸⁸ Al-Baqara, 2: 237.

⁸⁹ Al-Baqara, 2: 236.

Reading Text

EMBRACE ISLAM AND I WILL MARRY YOU

In order to harmoniously continue the life of marriage and to be able to achieve its important goal, the relations between the husband and wife must be healthy, the family ties must be strong, and the family must be built on steady foundations by starting with choosing a good spouse.

There is a good Muslim woman in Islamic history who is a nice role model for us in achieving all these: namely Ummu Sulaim binti Milhan...

Ummu Sulaim was one of the Ansari women living in Medine who embraced Islam first. She married Malik b. Nadr and had a son named Anas with him.

When Ummu Sulaim accepted the religion of Islam, her husband Malik could not handle this and left her. Not many years had passed when she received the news of his death. She, herself, was still very young. She handled all this in a state of patience, waiting for her spiritual rewards only from Allah.

At the time, Abu Talha, one of the rich, powerful and handsome, elite youngsters of Medina, who had not yet embraced Islam, proposed to her. Being the man who was always talked about in admiration by the girls of Medina, he thought that Ummu Sulaim would willingly accept his proposal. Ummu Sulaim answered him saying,

- O Abu Talha! You are not a Muslim and you worship idols. I cannot accept your proposal. Do you not know that the idol which you worship was once a tree that was growing in the soil? A certain Abyssinian had cut that tree and whittled it into what it is now.

Abu Talha explained in length the large quantities of dowry he would give her and that he would ensure her a life of abundance and comfort. After Ummu Sulaim listened to him, she said,

- I swear by Allah that you are definitely not someone who should be turned away. But you are an infidel and I am a Muslim woman. It is not permissible for me to marry you. If you accept Islam, your acceptance of Islam can be my mahr. I do not want any other property or goods from you.

On the second day, Abu Talha came up to Ummu Sulaim with a proposal including even a larger quantity of mahr and offered her even more goods. He asked for her hand in marriage again. Ummu Sulaim once again made clear that she would not marry him if he did not become a Muslim and said,

- The idols to which you all worship have been made by so and so man's slave who is a carpenter. If you throw them in the fire, will these idols not burn? Abu Talha who was affected by these logical and thought provoking words started to ask himself these questions,

- How can a being that is accepted as God burn? Had they not indeed made their idols with their own hands? As he was processing these thoughts, the words of the Kalima Shahadah rolled out of his mouth and he became a Muslim.

It was at that moment that Ummu Sulaim happily asked her son Anas to immediately call for witnesses. The witnesses came and the marriage contract was performed. It was announced to the public.

Abu Talha wanted to bestow all of his wealth upon Ummu Sulaim but she did not accept it. She showed such an act of sacrifice that it could be an example for all women throughout history and she said,

- O Abu Talha! I married you for the sake of Allah. I do not want any other mahr from you besides this.

Ummu Sulaim knew very well that Abu Talha's conversion to Islam did not just enable her to have a nice husband that was equal to her, she also gained lots of spiritual rewards from Allah. Our Prophet's saying is sufficient in making clear the nature of this reward: *"By Allah, if He were to guide a single man through you, this would be better for you than a herd of red camels."* (al-Bukhari, Muslim)

I. NAFQA (ENSURING THE MAINTENANCE OF THE FAMILY MEMBERS)

Nafaqa is the term used for the payment of expenses of the person maintaining both himself and the people for whom he is responsible to look after.

After a woman is married, the expenses of her food, dressing, and housing are to be paid by her husband. The husband must pay for the expenses of his wife's food and clothing. **“The father of the child shall bear the cost of the mother's food and clothing on a reasonable basis.”**⁹⁰ The wisdom behind this has been explained in the following verse of the Qur'an: **“Men have authority over women because God has made the one superior to the other, and because they spend their wealth to maintain them.”**⁹¹

The quantity of the nafaqa has not been specified in Islam; the financial state of the man and woman is to be considered in regards to this matter. It is stated in the Qur'an: **“Let the rich man spend according to his wealth, and the poor man according to what Allah has given him. Allah does not charge a man with more than He has given; Allah, after hardship, will bring ease.”**⁹²



If the husband becomes unable to pay nafaqa, the bride has the right to go to court and ask the annulment of her marriage. The judge gives the husband a couple of days to earn nafaqa. If he cannot earn it, the marriage contract gets revoked. However, if the woman has known the man's financial situation at the time of marriage contract and knowingly accepts the contract, she does not have the right to take her situation to the court. She needs to show patience and continue marriage life. The proof of this is stated in the following verse: **“If they are poor (people to get married), Allah will enrich them from His own bounty.”**⁹³

INFORMATION BOX

Under some circumstances, the woman loses her right to the nafaqa. Below are some of them:

- Despite the husband's invitation, the woman's refusal to come home or if she leaves home in a disobedient manner, in this case the man does not need to pay the nafaqa.
- If the woman leaves Islam, the man is no longer required to pay the nafaqa.
- The separation caused by the fornication of the woman or by her some other sin, in this case he does not need to pay the nafaqa.

90 Al-Baqara, 2: 233.

91 Al-Nisa, 4: 34.

92 Al-Talaq, 65: 7.

93 Al-Nur, 24: 32.

The responsibility of the children's nafaqa is upon the husband. The children's eating, clothing, and housing needs are included in this nafaqa. It is stated in the 61h verse of chapter al-Talaq: **“And if they (child's mother) breastfeed for you (your children), then give them their payment and confer among yourselves in the acceptable way.”** It is explained here that the divorced woman is entitled to be paid for breastfeeding her child after she has completed her iddah. This shows that the responsibility of the child's nafaqa is upon the father.

If the woman is pregnant at time of divorce, husband's responsibility to provide nafaqa continues.

If the bride needs a servant due to her sickness or disability, it becomes obligatory for the husband to provide her with a servant.⁹⁴

The father is responsible for taking care of his son up until the age of his puberty. However if the son is disabled, ill or if he is not able to make money because he is studying at the time of his puberty, then the father will continue to be responsible for his child's care. As for the daughter, conditions, such as age and reaching puberty, are not taken into consideration. The father is responsible for the care of his daughters up until she gets married. The provisions of those who cannot work, are needy, disabled, too young, or insane become obligatory upon the closest kin.

If the mother and father become poor or cannot work anymore due to old age, the children will then be responsible for looking after them. It is stated in the verse: **“Your Lord has enjoined you to worship none but Him, and to show kindness to your parents?”**⁹⁵

It has been related from Jabir b. Abdullah that the Prophet said that, “A man and his father came up to the Prophet - peace be upon him - and said, “O Messenger of Allah! I have property that belongs to me, and my father also owns property. My father would like to own my property.” Upon this the Messenger of Allah – peace be upon him –said, *“You and your property belong to your father.”*⁹⁶

No matter how many generations goes up, the provisions of parents is the responsibility of the children and no matter how many generations goes down, the provision of children is obligatory upon the parents. Even if the religions of parents are children are different, the same rule is applied.⁹⁷

A man should provide the needs of his needy father and his stepmother. One should also pay his father's dowry if his father is poor and needs to get married.

J. UNDERTAKING THE RESPONSIBILITY OF UPBRINGING THE CHILDREN (HIDANAH)

Hidanah means to protect and look after a child who cannot take care of himself/herself. The aim of hidanah is to protect the person who cannot look after himself/herself, and to give the responsibility of the task of caring and raising that person to a particular individual. Even if they are divorced, the spouses have the right to see their children and this right cannot be violated by either of the spouses.

There is a consensus among Muslim scholars that the person who is most deserving of the right to undertake the responsibility of caring for and raising the child is the mother. A woman came up to the Messenger of Allah and said, “O Messenger of Allah! This is my son. My belly was a vessel, my breast was a source of sustenance, and my lap has been a warm home for him. Now his father has divorced me and he

94 Al-Nawawi, Minhaj, s.929

95 Al-Isra, 17: 23.

96 Sunan Ibn Maja; al-Sarakhsi, al-Mabsut, V, 222-229

97 Al-Nawawi, Minhaj, p. 939

wants to take my child away from me.” The Prophet - peace be upon him - said as follows, “*So long as you do not marry someone else, you are the one who has the most rights over the child.*”⁹⁸

If the widowed mother breast-feeds and continues to care for her child after the iddah term is over she may claim breastfeeding and care taking payments from her husband. She may also receive nafaqa from the husband so that she may be able to meet the child’s eating, drinking, clothing, and cleaning needs.

If there are close female relatives who can take on the task of hidanah, this right will be theirs. If the child has no mother or if the mother is not eligible for the right of hidanah, this right will be passed to the mother’s mother, then to father’s mother, then to sisters, then to the maternal aunt, then to the daughters of brothers and sisters, and then to the paternal aunt respectively.

Slave, insane, one who is not morally upright, and disbelieving relatives do not have the right of hidanah over a Muslim child.



K. THE WOMAN’S OBEDIENCE TO HER HUSBAND AND ITS LIMITS

The woman must obey her husband’s requests so long as they are in accordance with Islam. When the Prophet was asked which woman is considered most virtuous, he said, “*The most virtuous of women are the ones that when her husband looks at her she gives him happiness and joy, if he orders, she obeys and she would not do the things her husband dislikes in regards to her property and personal life.*”⁹⁹ It has been stated in other sayings of the Prophet (pbuh): “*If a woman dies in a state that her husband is pleased with her, she will enter paradise.*”¹⁰⁰ “*If I were to order anyone to prostrate to someone other than Allah, I would order the wife to do so for her husband.*”¹⁰¹

If the woman does not listen to the words of her husband and openly rebels against him even though he treats her with respect and kindness, the husband then has the right to punish her. Allah Almighty has explained the way in which this right should be used: “**But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand.**”¹⁰²

98 Abu Dawud, Talaq, 35

99 Abu Dawud, Zakat, 32

100 Ibn Maja, Nikah, 4

101 Abu Dawud, Nikah, 40

102 Al-Nisa, 4: 34.

The woman should protect her husband's honor and decency. The Prophet - peace be upon him - stated in his Farewell Sermon: *"You have rights over them; that they should not allow anyone whom you dislike to sit on your bed and to not allow them into your house. But if they do that, you can chastise them but not severely."*¹⁰³

A husband cannot beat his wife because he feels like it. He is not allowed to oppress her. An obedient and pious woman must not be punished because of a mistake they have made: *"Treat your wives well and be kind to them for they are your partners and committed helpers. As long as they do not openly commit a*



*sin, you do not have any other rights over them other than this. If they do have open acts of rebellion, leave them to be alone in their beds and beat them lightly. If they obey you, do not look for any other way that will be against them."*¹⁰⁴

In Islam, the beating of people has been prohibited as a principle. The Messenger of Allah - peace be upon him - stated, *"Do not beat the worshippers of Allah."* (Abu Dawud, Nikah, 42) *"Do not beat women."* (Abu Dawud, Nikah, 41)

Aisha (d. 58/677) said about the way that our Prophet treated his family: *"In the way that the Prophet beat no woman from his family he also did not beat any servant.*

*And again, He had hit nothing with his hand except when fighting in the cause of Allah or when disrespect was being shown to Allah's prohibitions or when he was getting revenge for the sake of Allah."*¹⁰⁵

When Mu'awiyah (r.a.) asked: "O Messenger of Allah! What is the right of the wife of one of us over him? He (pbuh) replied, "That you should give her food when you eat, clothe her when you clothe yourself, do not strike her on the face, do not revile her or separate yourself from her except in the house."¹⁰⁶

Unless the woman has a serious disability, she must not turn away the sexual requests of her husband. *"When a man calls his wife for sexual intimacy and she refuses him, thus he spends the night in anger. The angels curse her until morning."*¹⁰⁷

If a man is married to more than one wives, he must treat his wives fairly. Under normal circumstances, he must spend equal time with each one of his wives. It is recommended to go to the houses of his wives in an order. Living in the same house and forcing his wives to live in the same house without the consent of his wives is prohibited.¹⁰⁸

The woman must get permission from her husband if she wishes to perform voluntary fasting, because the rights of the husband come before performing supererogatory fasting. Thus, the Messenger of Allah stated, *"It is not permissible for a woman to fast (optional fasts) without her husband's permission if he is at home (staying with her) and to let a stranger enter the house without his permission."*¹⁰⁹

103 Muslim, Hajj, 47

104 Al-Bukhari, Anbiya, 1

105 Muslim, Fadail, 79

106 Abu Dawud, Nikah, 42

107 Al-Bukhari, Bad' al-Khalq, 7

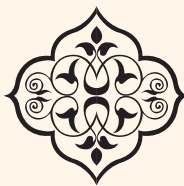
108 Al-Nawawi, Minhaj, s.786

109 Al-Bukhari, Nikah, 86

Under normal circumstances, the woman can leave her home with the consent of her husband. In a saying of the Prophet that was related from Abdullah ibn Umar (r.a.), it is stated, “A woman came to the Messenger of Allah and asked; O Messenger of Allah! What is the husband’s right over his wife? He said the woman not to leave her husband’s house without getting his permission first. To her next question “what if she does, what happens to her,” the Messenger of Allah responded: ‘Allah and His angels of mercy and wrath will curse upon this woman until she repents or returns home.’ For her question “Is the situation same when the husband oppresses his wife?” the Prophet answered: ‘yes, even if he is an oppressor.’”¹¹⁰

There are a few cases in which the woman may leave her home without the consent of her husband:

- The woman may go to Mecca to carry out the obligatory pilgrimage with a group of people who are considered to be morally reliable. The husband cannot stand in the way of this.
- If the husband is not helpful in helping the wife in educating herself on religious matters and getting opinions on these topics, once a week the woman may go to places where she can learn religious matters and participate in talks without the consent of her husband. She may even ask people who are qualified of their opinions on religious matters.
- The husband cannot prohibit his wife from visiting her parents who live in the same vicinity for once a week and he cannot prohibit her from visiting her close relatives such as her siblings, uncle, aunty once a year. However, the woman cannot spend the night somewhere other than her home without the consent of her husband. However, if the woman’s parents become gravely ill and they do not have anyone to care for them, the woman may stay at her father’s house and take care of them even if her husband does not give his consent. However, in such situation, the husband will not be held responsible for the nafaqa of the woman.
- The husband cannot stand in the way of his wife visiting her children who she had with her ex-husband from a former marriage.



110 Abu, Dawud, Nikah, 40

Reading Text

GETTING ALONG WELL IN THE FAMILY

The woman who dies having gotten along well with her husband has a place in Paradise.”

Yazid, one of the Companions of the Prophet, had a daughter by the name of Asma. She could pleasantly and eloquently speak. One day the female Companions chose Asma as a representative from amongst themselves and sent her to the Prophet. They wanted her to go and learn of a topic which they had been curious of. Asma entered into the Prophet’s presence and said this:

“O Messenger of Allah, may my mother and father be sacrificed for you! I am the messenger who the women have chosen from amongst themselves as their representative and I have been sent here by them. Allah Almighty has sent you as a Messenger to all men and women. We believe in you and your Lord. However, as women we are closed off in your homes. We satisfy all of your carnal desires. We carry your children in our bellies. As for you men, you have long surpassed as with your privileges such as praying the Jumu’ah prayer, going to mosques and congregations, visiting the sick, being present at funerals, being able to perform the obligation of pilgrimage many times and also something that is more virtuous than all this you can go to holy war and carry out Jihad all for the sake of Allah. And also what is true is, when you leave the home to carry out the major or minor pilgrimage or when you go to holy war with the infidels we are the ones who protect your property, we stitch up your clothes and nourish your children. Then are we as women, also not entitled to the spiritual rewards of these virtuous deeds to the same degree of the rewards which you gain from all your good deeds?”

Asma had spoken very well. After the Prophet had listened to her very carefully up to the end of her speech, he turned to the Companions who were with him and said,

“Have you ever heard more pleasant words from a woman than these as she was asking a question on the matter of religion?” he asked. Afterwards He said to Asma,

“O Asma! Understand this really well and explain to those women who have sent you that the woman who gets along well with her husband and makes him happy is considered to gain the same spiritual rewards as all of the rewarding acts of worship that you have just mentioned.”

Having received this answer, Asma left while saying prayers.



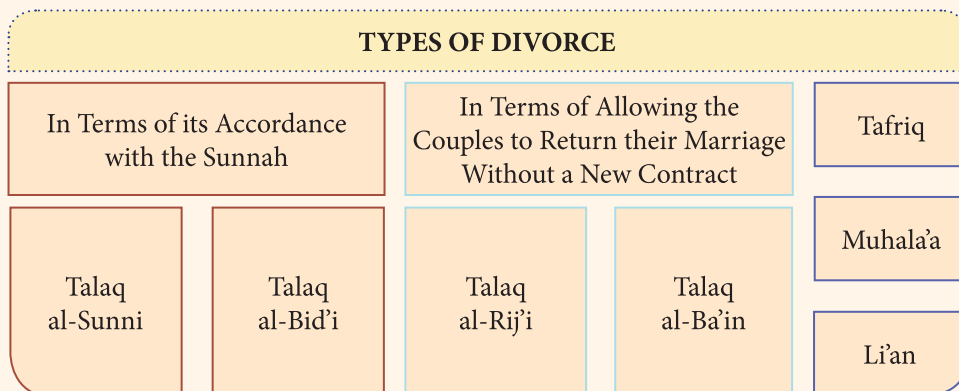
L. THE TERMINATION OF MARRIAGE (DIVORCE)

In Islam, the principle of “continuity” is considered to be essential. However because Islam is a religion which accepts the realities of society and bases itself on them, it has regarded the separation of spouses lawful who clearly will never get along, and spouses who have enmity and hate towards one another.

It has been advised that disputes in the family should first be tried to be solved using methods of peace and that the spouses should be tried to be reconciled with the help of arbitrators. **“And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted (with all things)”**¹¹¹ If the problem cannot be resolved by using these methods and if there seems to be major problems in the continuation of the marriage, then Islam, although it is not seen as something pleasant, permits the divorce..

In many sayings of the Prophet, it has been clearly mentioned that divorce is not something pleasant. Abdullah b. Umar related that the Prophet (pbuh) had said, *“Of all the permissible things, the one thing Allah Almighty dislikes most is divorce.”*¹¹²

In the case of divorce, both spouses should not worry about the matter of livelihood. It is stated in the verse: **“But if they separate [by divorce], Allah will enrich each [of them] from His abundance. And Allah is ever Encompassing and Wise.”**¹¹³



Valid reasons for divorce in Islam:

1-) Unchastity and giving harm to the religion: A divorce can be required when a spouse behaves in an unchaste manner, when he/she do not protect his/her honor, or when they prevent the other from performing the obligatory acts of worship such as prayer and fasting. In addition, when they commit sins such as consuming alcohol and gambling.

2-) Severe dissension and ill-treatment: If a husband treats his wife badly without a reason, the judge restrains him. If any one of the spouses claims that the other spouse has crossed the line, the judge searches about their situation by means of someone knowing them. The judge then prevents the one who crosses the lines of rights and responsibilities. Spouses are allowed to ask divorce when one of them makes accusations concerning the other's honor, reputation and integrity, when one of the spouses forces the other to commit an act that has been declared prohibited by Allah or not showing interest to the other without an important reason.

¹¹¹ Al-Nisa', 4: 35.

¹¹² Abu Dawud, Talaq, 3

¹¹³ Al-Nisa', 4: 130.

3-) Disobedience to the husband: The husband can divorce the woman when she is disobedient towards him and does not comply with his sexual requests, when she rebels, when she is not happy with him even though he takes care of her nafaqa and in the case that she neglects their children.

4-) If one of the spouses has a deficiency: If one of the spouses has a deficiency such as insanity, leprosy, incompetence etc., the other spouse has the right to revoke the marriage. The woman can appeal to a judge with the purpose of ending her marriage if her husband is sexually impotent, or if he has physical defects such as not having a sexual organ or testicles.

5-) The Husband's inability to provide the Nafaqa: The husband is responsible for paying off the expenses of the woman's needs of food, clothing, and housing. If the husband does not take care of his wife and leaves her in hunger and poverty even though he is wealthy or has the opportunity to make money, in this case the woman should firstly try to obtain the nafaqa from her husband, if this is not possible it will be her right to find a way to divorce him.

If the husband is poor, his wife must be patient. It is stated in the verse: **“Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him. Allah does not charge a soul except [According to] what He has given it. Allah will bring about, after hardship, ease.”**¹¹⁴ However, if the husband is unable to provide any kind of livelihood, his wife can file for divorce.

6-) When the husband flees the home: Divorce may be an option when the husband flees the home and the wife experiences hardship because of this reason. When Umar (r.a.) was the caliph, he sent a document on the topic of men who live apart from their spouses, ordering them to either provide their wives' nafaqa or to divorce them.

M. TYPES OF DIVORCE

The married man has the right to divorce his spouse twice (utterances of the desire to divorce), but with the third divorce (utterance) they will have completely and officially separated: **“Divorce may be pronounced twice, and then a woman must be retained in honor or allowed to go with kindness.”**¹¹⁵

There are many reasons as to why the right of divorce has been given to the husband in Islam. Some of these reasons are that the woman is considered to be more emotional than the man is so she may not always have clear judgment. Men, who pays his spouse the dowry and provides her sustenance, may usually evaluate circumstances more realistically. This right has also been given to him so that wife's obedience towards the husband can be ensured. Precautions, however, have been set so that this authority is not misused.

It is possible and lawful for the husband to leave the authority of divorce to his spouse either during the marriage ceremony or sometime after the marriage. This is called **“tafwiz al-talaq.”** The woman who gets the right to divorce may use this right immediately. If a husband tells his wife “divorce yourself” and if she says “I divorce myself,” and both of them have the intention to divorce, divorce takes place. If the husband says his wife “I deputize you to divorce yourself” or “divorce yourself whenever you want,” the woman does not have to divorce herself immediately. She can use this right anytime she wants. The husband who transfer his right to divorce has the right to withdraw this transfer of right.¹¹⁶

¹¹⁴ Al-Talaq, 65: 7.

¹¹⁵ Al-Bakara, 2: 229.

¹¹⁶ Al-Shirbini, *Mughni al-Muhtaj*, III, 377.

If the divorce is linked to a condition, the divorce takes place when the condition takes place. For example, if someone says to his wife, “If you talk to such and such person, you are divorced!”, divorce takes place whenever she talks to that person.

I. DIVORCE TYPES IN TERMS OF THEIR ACCORDANCE WITH SUNNAH

Divorce can be classified in two groups Sunni and bid'i divorce. These are based on whether or not it is in accordance with the principles set forth in the Qur'an and the Sunnah of the Prophet.

A) TALAQ AL-SUNNI (Divorces carried out in accordance with the Sunnah):

The divorce that is in accordance with the Sunnah is for the man to not divorce the wife while she is menstruating and for him to not engage in sexual intercourse with her within this period of time. The husband should divorce his wife once (one utterance of divorce) and then he should wait until her iddah (waiting) period ends. Divorce should be out of a religiously acceptable reason.

B) TALAQ AL-BID'I (Divorce that is not in accordance with the Sunnah of the Prophet):

Examples for the bid'i talaq; to divorce the woman whilst she is menstruating, to divorce her once after sexual engagement and pronouncing to divorce her more than one utterance of divorce at once. These types of divorces are considered to be valid despite the fact they are not in accordance with the Sunnah.

II. IN TERMS OF ALLOWING THE COUPLES TO RETURN THEIR MARRIAGE WITHOUT A NEW CONTRACT

Divorce can be classified into two groups according to whether they mean definite separation or not: rij'i (allowing to return during the waiting period) and ba'in (which creates definite separation) divorce.

A) TALAQ AL-RIJ'I (Divorce that allows returning throughout the iddah (waiting) period):

This gives the husband the chance to revoke the divorce and return to his wife without the need for a new marriage contract. This rule is valid up until the end of the iddah period. This type of divorce is called “rij'i divorce.”

The divorce done by normal divorce terms after marriage contract and consummation of marriage is regarded as rij'i divorce.

Below are the provisions arising from a rij'i divorce:

a) The tie of marriage continues until the end of the iddah period. It is lawful for a woman who has divorced with the rij'i talaq to reside in the same house as her husband. The spouses do not have to be wary of covering themselves up. In fact, it is considered pleasant within this time period for the woman to try and beautify herself in order to ensure the continuation of the marriage.

b) Even if the divorced woman approves or does not approve, this type of divorce gives the regretful husband the right to return to his spouse without the need for a new marriage agreement. As long as the husband has the right to return his wife, his wife cannot marry another man.¹¹⁷

c) After the rij'i talaq, if one of the spouses happens to die while the woman is waiting for her iddah period to end, then the living spouse will be the heir to the other.

d) The number of utterances of divorces that are allowed to be used will decrease. For example, if the husband divorces his spouse with two rij'i talaqs, he will only have one more right left to divorce her.

Because Islam desires the continuation of marriages and not for the family nest to be destroyed and scattered, it has taken precautions to ensure that this goal is made possible. In the case of the rij'i divorce,

¹¹⁷ Al-Shirbini, Mughni al-Muhtaj, 5/4-5

no limitation whatsoever is placed on the financial and civil rights of the spouses. With the rij'i divorce, the regretful spouses will have gained the opportunity to continue their family life as if nothing ever happened when they reconcile within the iddah time period.

B) TALAQ AL-BA'IN (Divorce that ends the marriage definitely):

The "ba'in divorce" takes place when the marriage comes to an end during the process of divorce and it does not allow for the possibility of the continuation of the marriage without there being a new marriage agreement. In the ba'in divorce, it is not lawful for the husband to have physical contact with his wife within the iddah time period, because the tie of marriage no longer exists between them.

The divorce which takes place after marriage contract, but before the consummation of marriage, divorce which takes place in return for some kind of payment, divorce which happens three times are examples of ba'in divorce. In the rij'i talaq, if the husband does not return to the spouse up until the end of her iddah period which requires her to see three menstruation cycles, the divorce will automatically turn into a ba'in divorce.

The following are the rulings of the ba'in divorce:

a) The marriage immediately ends with this divorce. The woman cannot be in the presence of her husband without being fully covered.

b) The woman may reside in a section of her husband's house until the end of the iddah period, if she is pregnant she may benefit from the nafaqa, if she is not she cannot benefit from it..

c) The spouses cannot be heirs to one another.

Baynunat al-kubra (the most definite separation) is the third utterance of divorce that terminates the husband's power of divorce over the woman. With this divorce it will not be possible for the spouses to remarry each other without hulla. The definite separation takes place when the woman who has already been divorced twice is divorced for the third time. It does not make a difference if the previous divorces were rij'i or ba'in..

Intention is important in the divorce. Thus, according to what Ahmad b. Hanbal related from Ibn Abbas (r.a.), Ruqane b. Abdi Yazid divorced his wife three times at one assembly and later he was very saddened by what he had done. When the Prophet (pbuh) asked him in which way he divorced his wife he said; "I divorced her three times." To the question of whether or not it was in one assembly he replied "yes." After this when he said, "I swear by Allah with this I intended to divorce her only once." The Messenger of Allah (pbuh) said, "It was just one divorce, if you please you may return to your wife." So Rukane went back and returned to his wife.¹¹⁸

Divorces that are uttered more than three times are accepted as three talaqs. One man had come to Ibn Abbas and asked; "I divorced my wife with one hundred talaqs, what do I need to do?" to this he answered as follows: "Your spouse has been divorced from you three times and you are considered to have made fun of Allah's verses with the other ninety seven divorces."¹¹⁹

III. THE TERMINATION OF THE MARRIAGE WITH THE DECISION OF THE JUDGE (TAFRIQ)

According to Islamic law, spouses may appeal to the court. If the judge finds it necessary, he may end the marriage. The conditions for which it is possible to appeal to a court are as follows:

a) The husband not providing the nafaqa or mistreating his wife.

¹¹⁸ Ahmad b. Hanbal, Musnad, I; Abu Dawud, Talaq, 10

¹¹⁹ Malik, Muwatta', Talaq, 1

b) If an important impediment which prevents the marriage life, such as being the adherent of different religion, sexual impotence, comes into existence, or if husband gets missed or imprisoned for a long time.

c) The mahr being less than the standard mahr or the objection of the guardian on the matter of existence of equality between the couple; the girl and boy who were married when they were children using their right to choose when they reach puberty; the mentally ill person appealing to a judge for a divorce when he/she gets better.

d) The spouse informing the judge and requesting a divorce when the other spouse salaciously kisses, embraces, or carries out any other similar action with a person to whom he/she can get married.

e) When one of the spouses says the other committed fornication but cannot prove it with four witnesses. Because of this, the mutual swearing and cursing is carried out before a judge in the court. With this, the spouse requests a divorce from the other spouse he/she believes to have committed fornication. This method is called Han (mutual cursing).

IV. THE WOMAN'S REQUEST FOR DIVORCE IN EXCHANGE FOR COMPENSATION; SHE GIVES (MUHALA'A)

Muhala'a means the divorce request of the woman in return for monetary compensation when the two spouses mutually decide to put an end to their marriage. The method of muhala'a is taken into consideration when the marriage becomes unbearable for the woman. When the woman wants a divorce but the husband does not divorce her for various reasons, the woman may make a deal with her husband in exchange for him divorcing her. In this deal, the woman may give up her mahr or she may give the husband some kind of monetary compensation. The husband may make a muhala'a deal with the wife such as holding her responsible for the maintenance and expenditures of the children up until a certain age.

Muhala'a system is a way out for the woman. It is stated in a verse, “**...It is not lawful for you, (Men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah...**”¹²⁰

Divorce by way of muhala'a is considered to be a ba'in (definite) talaq. According to a narration by Ibn Abbas (r.a.), The wife of Thabit bin Qays came to the Prophet (pbuh) and said, “O Allah's Messenger (pbuh)! I do not blame Thabit for defects in his character or his religion, but I, being a Muslim, dislike behaving in un-Islamic manner (if I remain with him).” On that Allah's Messenger (pbuh) said (to her), “*Will you give back the garden which your husband has given you (as Mahr)?*” She said, “Yes.” Then the Prophet (pbuh) said to Thabit, “O Thabit! Accept your garden, and divorce her once.”¹²¹

V. DIVORCE BY VOWING NOT TO SLEEP WITH THE WIFE FOR FOUR OR MORE MONTHS (ILA)

'Ila means that the husband vows not to come near his wife for a period of about four months or more and setting it to a very hard condition if he breaks his promise. It is stated in the verse: “**Those that renounce their wives on oath must wait four months. If they change their minds, Allah is Forgiving and Merciful; hut if they decide to divorce them, know that Allah hears all and knows all.**”¹²²

In the case of 'Ila, it is encouraged for the spouses to return to one another and continue their marriage: “**If they return to their spouses-then indeed, Allah is very Forgiving and Merciful.**”¹²³ A'isha (r. anha) has narrated, “*Allah's Messenger made 'ila to his spouses and he turned what is halal for him into a*

120 Al-Baqara, 2: 229.

121 Al-Bukhari, Talaq, 11

122 Al-Baqara, 2: 226.

123 Al-Baqara, 2: 226.

haram. Afterwards he turned what is haram for him into a halal and he gave atonement due to this vow he hadmade."¹²⁴

If atonement is given after the process of 'ila and the divorce is revoked, then one of the rights of divorce decreases.

The time period of 'ila starts with the vow of the husband not to come close to his wife. The 'ila will start when words such as the following are spoken: "If I come in contact with you, I will sacrifice a ram." If the husband does not return to his spouse even though it has been four months, it will be ordered to him by the courts to give his final decision. If the husband fails to do so, the court ends the marriage.

THE SPECIAL SITUATIONS RELATED TO DIVORCE:

UNSERIOUS DIVORCE: Like marriage, divorce is also a serious matter that directly affects a person's life. It should not be taken lightly. Even if it were a joke, words such as "I divorced you" should not be spoken to the wife, who is an emotional being by nature. It is stated in the following hadith related by Abu Hurayra: *"There are three things that should be taken seriously, even its joke should be taken seriously. Marriage, divorce, and returning to the spouse in the rij'i divorce."*¹²⁵ A divorce will not take place when words are pronounced incorrectly due to a slip of the tongue to sound like a divorce is wanted.

THOSE WHOSE DIVORCE IS NOT VALID:

The divorce of an insane, sleeping, person or one who is forced to divorce is not valid. On the other hand, the divorce of an intoxicated man is valid as a punishment for him.

If the woman is in the waiting period due to a rij'i or ba'in divorce, another divorce in that period is not valid. Because during the waiting period, she is not regarded as the wife of the man who has divorced her.

ZIHAR (HUSBAND'S LIKENING THE WIFE TO SOME OF HIS PROHIBITED FEMALE RELATIVE):

The term zihar means, "an insult proffered by a husband upon his wife which likens the wife to some prohibited female relation of his or to the limbs of that relative." For example, zihar is committed by the Muslim husband saying to his Muslim wife: "You are like my mother." Zihar used to be the worst type of divorce in the pre-Islamic period. Because it used to be accepted that the wife was becoming like the husband's mother who is prohibited to marry permanently. Islam abolished this ruling. Instead, the husband who commits such an act is required to atone for it.

The atonement for committing zihar is to emancipate a believing slave. If one does not have any slave, he should fast two months consecutively. If one is not able to fast due to an illness or old age, he is required to feed sixty poor people. It is prohibited for a husband who commits zihar to sleep with his wife until pays the atonement.

THE SITUATION OF A WOMAN WHOSE HUSBAND GONE MISSING:

If the husband of a woman goes to a distant place and no news is received from him for a long time, she is not allowed to take this matter to a court according to Shafii and Hanafi Schools. According to Maliki School, if the husband is missing for more than a year, even if it is for studying or for business, this gives the wife the right to go to a court. If the whereabouts of the husband is known, the judge sends a warning to the husband to come back to his family, to provide their livelihood, or to divorce his wife.

¹²⁴ Al-Bukhari, Talaq, 21

¹²⁵ Abu Dawud, Talaq, 9

If a person is missing and it is not known where he is and whether he is alive or not, this person is called “mafqud.” There are various views among Muslim jurists regarding the situation of a mafqud. According to prevalent view in Shafii School, “when it is strongly believed that he is no longer alive”, he can be determined as legally dead.¹²⁶ According to Hanafi and Hanbali Schools, it should be waited until all the men who are at the same age die or until such a time that the missing person would normally live passes. According to Maliki School, the judge investigates the situation upon the wife takes the matter to the court. If there is no hope left to get news from the husband, it is waited for four years. At the end of four years, the judge separates the couple and the wife waits the iddah period of a woman whose husband dies.¹²⁷

THE SITUATION OF A WOMAN WHOSE HUSBAND IS INCARCERATED:

Even if it is for a long period of time, a woman whose husband is in jail does not have the right to ask for divorce. Only Maliki School allows women to go to court for divorce if the husband will be in jail for more than a year. Upon filing such a case in a court, the judge separates the couple and this separation is accepted as a ba'in divorce.

N. IDDAH AND ITS CONDITIONS

Iddah is the period of time a woman must wait when her marriage comes to an end in order for her to be able to marry again. The limit of the period of time she must wait has been determined by the Sharia. The length of time of the iddah varies from case to case:

A-) The iddah in the case of the husband's death: If the woman is not pregnant her iddah in the case of her husband's death is four months and ten days.

B-) The iddah of the pregnant woman: Allah Almighty says, “**And for those who are pregnant, their term (iddah) is until they give birth.**”¹²⁸ Haris' daughter Subay'a (r.anha), one of the Companions, lost her husband when she was pregnant and she gave birth ten days after his death. The Prophet informed her that her iddah was over and she was allowed to get married if she pleased.¹²⁹

C-) The iddah of the divorced woman: The iddah for a divorcee is actualized within about three months. It is stated in the Qur'an, “**Divorced women must wait, keeping themselves from men, three courses of quru'..**”¹³⁰ According to Shafii School, the term quru' means the clean days of the divorced woman, in other words the days of the month when she is not menstruating. If a man divorces his wife during the clean days, his wife's waiting period ends when she enters the third course of clean days. However, if he divorces her during the days of her menses, her waiting period ends when she enters the fourth course of clean days. If divorce takes place before the consummation of the marriage, the woman does not need to wait for the iddah.



126 Al-Shafi'i, al-Umm, V, 346; al-Shirbini, Mughni al-Muhtaj, V, 97-98

127 Wahba Zuhayli, al-Fiqh al-Islami, V, 784-785

128 Al-Talaq, 65: 4.

129 Al-Bukhari, Talaq, 39

130 Al-Baqara, 2: 228.

D-) The iddah of elderly women and the iddah of women who cannot menstruate: The iddah for women who no longer menstruate is considered to be three months. Allah Almighty says as follows in this regard, “ **Such of your women as have passed the age of monthly courses, for them the prescribed period, if ye have any doubts, is three months...**”¹³¹

If a woman does not menstruate, the length of her waiting period is three months. The following verse expresses the length of waiting period of the women in this group, “ **Such of your women as have passed the age of monthly courses, for them the prescribed period, if ye have any doubts, is three months, and for those who have no courses (it is the same)...**”¹³²

The rights and responsibilities of the woman waiting for iddah:

A-) The right of nafaqa: The woman who is divorced with the rij'i talaq has the right to have her nafaqa needs provided such as food and clothing throughout the iddah period. If the woman divorced by a ba'in divorce is pregnant, her nafaqa is the responsibility of her husband until the birth of her child. The following verse points out to this matter, “**...And if they should be pregnant, then spend on them until they give birth...**”¹³³

Even if she is divorced by ba'in divorce, providing for her a place to spend her waiting period is the responsibility of her husband. This is expressed in the following verse, “**...Lodge them [in a section] of where you dwell out of your means and do not harm them in order to oppress them...**”¹³⁴

B-) Residential security: When the woman is divorced with a rij'i or ba'in talaq she has the right to reside in her husband's home throughout the iddah period. It is permissible for people to expel the woman in waiting period out of the house where she spends her waiting period. It is also not permissible for her to leave that house. It is stated in a verse, “**...Do not expel them (divorced women) from their homes; and neither shall they [be made to] leave unless they become openly guilty of immoral conduct...**”¹³⁵

C-) The limitation on the freedom of travelling: It is deemed inappropriate for a woman in waiting period to set out to a journey no matter if it is for pilgrimage or for some other reason and no matter if a close male relative (mahram) accompanies her or not. It is also not appropriate for a woman in waiting period to go out by adorning herself. However, it is permissible for her to go out for necessities.

D-) The prohibition of getting married and engaged: It is not permissible for a man to propose to a woman who is in the waiting period due to divorce or her husband's death. This is expressed in the following verse, “**...And do not determine to undertake a marriage contract until the decreed period reaches its end.**”¹³⁶ However, it is permissible to propose implicitly to a woman who is in the waiting period due to her husband's death.

E-) Woman's mourning: A woman who is in the waiting period due to her husband's death should be in mourning for her deceased husband. It is prohibited for her to wear perfume, apply make-up, to adorn herself, apply kohl, to wear gold and silver ornaments, and to wear attractive clothes. In this regard, Allah's Messenger (pbuh) said as follows, “*It is not lawful for a lady who believes in Allah and the Last Day to mourn for a dead person for more than three days unless he is her husband for whom she should mourn for four months and ten days.*”¹³⁷

131 Al-Talaq, 65: 4.

132 Al-Talaq, 65: 4.

133 Al-Talaq, 65: 6.

134 Al-Talaq, 65: 6.

135 Al-Talaq, 65: 1.

136 Al-Baqara, 2: 235.

137 Al-Bukhari, Talaq, 45



EVALUATION ACTIVITIES

1. Explain the place and importance of the family in society.
2. Make a list of the benefits of marriage.
3. Explain the importance of the child's education in the family.
4. Give two examples for the verses and the sayings of the Prophet about marriage.
5. What are the conditions required for a marriage contract to be considered valid?
6. Who is prohibited for a man or a woman to get married?
7. What are the rights and responsibilities that arise from marriage? Explain.
8. Give information about the mahr.
9. Why has the responsibility of the nafaqa been given to the man?
10. How many types of divorce are there? Give information how a divorce in accordance with sunnah is carried out.
11. What does iddah mean? Explain.
12. Whom can the right of hidanah be given to? Why?



MATCH THE PAIRS

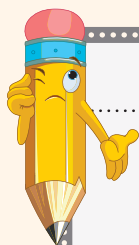
1	Rij'i talaq		<i>The divorce in which the marriage cannot be continued without a new marriage contract</i>
2	Bid'i talaq		<i>Divorce carried out in accordance with the Sunnah</i>
3	Tafwid talaq	1	<i>Type of divorce that allows for the return of spouses without a new marriage contract</i>
4	Ba'in talaq		<i>Giving the power of divorce to the woman in the marriage</i>
5	Sunni talaq		<i>Divorce that is not carried out in accordance with the Sunnah</i>

TRUE-FALSE QUESTIONS

1. () Islam has given permission to a man to marry up to four wives provided that he treat them all fairly. However, Islam encourages monogamous marriage.
2. () Because the man is considered an authority figure in home, he cannot joke around and play with his wife like a friend.
3. () Every child is born with the nature of Islam.
4. () Marriage is a source of spiritual rewards because it is a way of taking care of sexual desires through permissible ways.
5. () It is permissible for a boy and a girl who will marry to go out and wander around with each other
6. () It is prohibited for a believer to marry his/her adopted child.
7. () A man can marry his deceased wife's daughter whom she had from a previous marriage.
8. () An intoxicated man's divorce is valid.
9. () A person is allowed to marry the siblings of the husband of the foster mother.
10. () A Muslim man and woman cannot marry to polytheists.
11. () Because a sinning man with poor moral values is not considered equal to a virtuous and chaste woman, the guardians may prevent the marriage from happening.
12. () It is allowed for a man and woman to perform the mut'a marriage in order to marry for a determined period of time. There are no objections to this in Islam.
13. () In order to carry out a valid marriage, the man and woman must express that they accept the marriage and they should announce the marriage in the presence of witnesses and guardians during the marriage ceremony.
14. () The maximum amount of the mahr is 200 dirham.
15. () The woman must get permission of her husband in order to perform supererogatory fasting.

**MULTIPLE CHOICE QUESTIONS -1**

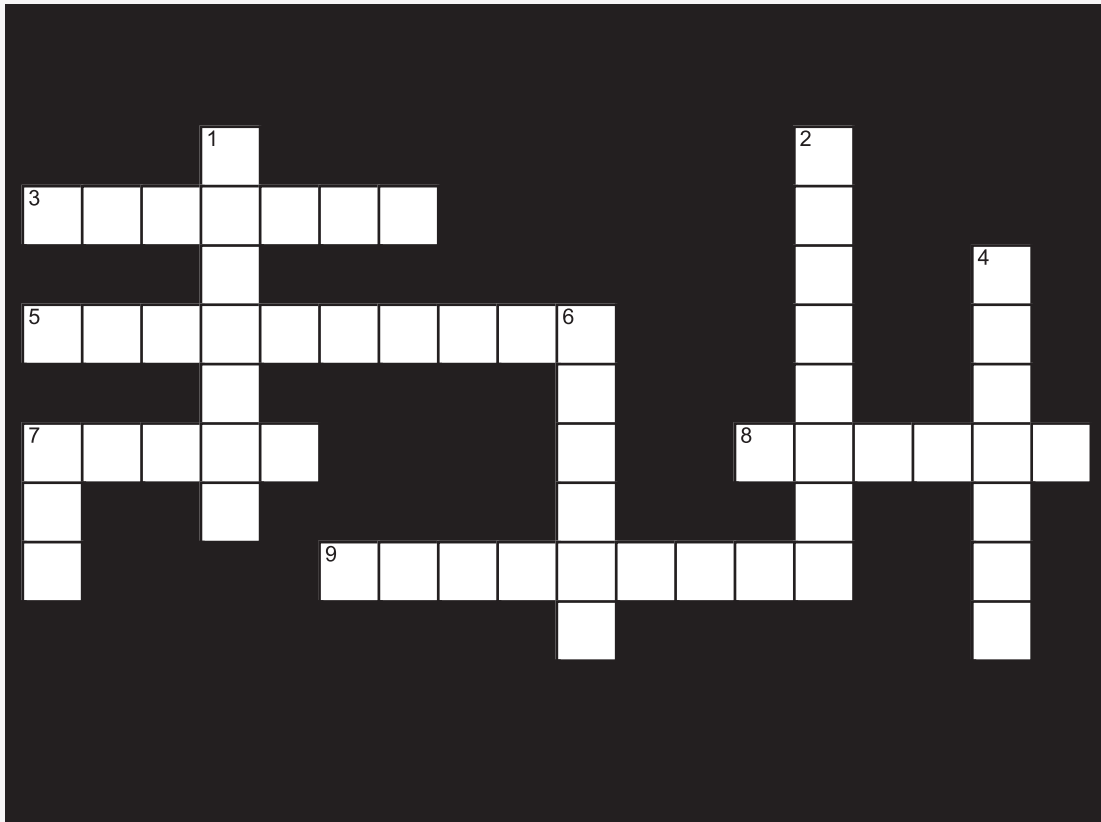
1. Which of the sentences below gives correct information about marriage?
 - A) A Muslim man may marry a polytheist woman.
 - B) A Muslim man may marry a woman from the People of the Scripture.
 - C) A Muslim woman may marry a polytheist man.
 - D) A Muslim woman may marry a man from the People of the Scripture.
2. To the question who is the most worthy of the best of your time and the best of your behavior, what response did the Messenger of Allah give?
 - A) Your children
 - B) Your father
 - C) Your spouse
 - D) Your mother
3. What is considered to be the best inheritance that a father could leave behind?
 - A) House, car
 - B) the state
 - C) Good character
 - D) Contentment
4. In a saying of the Prophet (pbuh) it is stated that when someone dies, their book of deeds will be closed but it will remain open about three matters. Of the options below which one is not one of these three matters?
 - A) Education that is benefited from
 - B) Continuous Charity (Sadaqa jariya)
 - C) A virtuous child
 - D) An arrangement made at the grave
5. What is appropriate for engaged prospective spouses to do?
 - A) To hold hands, go out, and wander around together
 - B) Look at each other's faces and hands
 - C) Stay alone with each other where there is no one around
 - D) To embrace one another in romantic places
6. To which one of the following can a woman marry?
 - A) Her sister's son
 - B) Her Step son
 - C) Her Father in law
 - D) A married man



MULTIPLE CHOICE QUESTIONS -2

7. For the establishment of kinship through marriage, there are certain conditions for the milk to be sucked in a certain age and in a certain amount. According to Shafii School which one of the following is accepted sufficient to establish milk kinship?
 - A) In two years and by one suckling
 - B) In one year and by five separate suckling
 - C) In two years and by five separate suckling
 - D) In one year and by one suckling
8. Of the options below which one is not a temporary impediment to marriage?
 - A) Marriage impediment linked to the iddah
 - B) The impediment that arises from the woman being married to someone else
 - C) The impediment that arises from divorcing three times
 - D) The impediment that arises from being related
9. In marriages, the guardians and the woman possess certain rights. Which of the options below has given incorrect information about the rights of wife and the guardians?
 - A) It is not deemed appropriate for a woman to marry without the permission of the guardians.
 - B) The guardians who are not among the mujbir guardians have the right to compel the girl under their charge to marry
 - C) The widowed woman may marry without the presence of her guardian.
 - D) It may be an impediment to marriage when the prospective husband is not equal to the woman.
10. Which type of marriage is permitted according to Islamic law?
 - A) Official marriage
 - B) Mut'a marriage
 - C) Arranged hulla marriage
 - D) Shigar marriage
11. What does the woman get when her husband divorces her before it is consummated?
 - A) Complete dowry
 - B) Half dowry
 - C) Mut'a (consolation gift)
 - D) She cannot get any dowry

CROSSWORD PUZZLE



-
3. The term used for the responsibility of nursing and raising a child.
 5. The first step taken before the marriage of two loving couple.
 7. The term used for the period that a woman needs to wait after divorce or death of her husband before getting married again.
 8. The term used for the suitability of the prospective groom to the prospective bride in order to ensure their harmony.
 9. To accept and fulfill an order.

- ↓
1. The term used for everything needed for a proper livelihood.
 2. A man and woman's agreement to establish a family.
 4. The term used for ending marriage with the wife's request by paying her husband some money.
 6. The term used for ending marriage with the verdict of a judge.
 7. The term used for the vows of a husband stating that he was not going to sleep with his wife for a period of four months or more.

CHAPTER 4

ECONOMIC LIFE IN ISLAM

CONTENTS

- A. THE IMPORTANCE GIVEN BY ISLAM TO LABOR AND TRADE
- B. THE RELIGIOUS NORMS FOR EARNING LIVELIHOOD
- C. THE RIGHTS AND RESPONSIBILITIES OF THE EMPLOYERS AND EMPLOYEES
- D. THINGS THAT ARE PROHIBITED IN BUSSINESS LIFE



PREPARATORY WORKS

1. What do you understand from the term trade ethics? Examine the sections about our Prophet's trade ethics from the books on the life of our Prophet (pbuh).
2. Read the verses that are associated with the subject of trade in the Qur'an.
3. Visit a trading company located in the city that you are residing in and gather information about that company and the way it operates.
4. Is there any limit for how much one can profit in Islam? Learn.
5. What kind of harms can carrying out trade with the ambition of making limitless profit to the individual and society? Ask it to tradesmen. Research.
6. In our present day, what are the mistakes that people make in trading? According to Islam, which commodities cannot be bought or sold? Research.
7. What kind of outcomes will there be in our globalized world, when deceit and fraud is mixed in buying and selling? Argue.
8. What would you do with something you have found? Argue.

A. THE IMPORTANCE GIVEN BY ISLAM TO LABOR AND TRADE



The religion of Islam has advised individuals to work and gain the necessities of life in a way that is most befitting to their means and capabilities and also to spend their money according to their needs.

Allah Almighty stated, **“It is He (Allah) who made the earth subservient to you (made the earth obey you so that you may benefit from it). Walk about its regions (mountains, hills and plains) and eat of His provisions.”**¹ What is meant by “walking about the earth’s regions” is to reveal the blessings which are beneficial to humans and to look for ways to achieve this goal.

According to Islamic law, it is ‘obligatory (fard)’ for a Muslim to ensure the livelihood (nafaqa) of both himself and his family. It is also obligatory for him to make enough money in order to pay off his debts. Also, it is ‘recommended (mustahab)’ to earn money with the intention of meeting the needs of destitute Muslims and helping the relatives by giving them money. It is considered ‘permissible (mubah)’ to earn more than what is needed in order to enjoy a pleasant and prosperous life. It is considered ‘prohibited (haram)’ to earn money, even if these earnings are acquired through permissible ways, in order to act show off towards others and to get caught up in worldly ambition in an attempt to compete with someone else’s prosperity. It is also prohibited to earn money in order to act depravedly and excessively with these earnings. In contrast to this, to participate financially in the struggle against disbelief and to work a lot and earn money with the sincere intent of spending in the path of Allah is considered to be a pleasant act of worship. The person who works and earns money with this aim is considered to be in a continuous state of worship.

According to the religion of Islam, manual labor is the primary and natural way of earning a living. The Messenger of Allah - *peace be upon him* - stated when encouraging manual labor and artisanship, *“No one has ever consumed something more virtuous than what is earned through their manual labor.”*²

1 Al-Mulk, 67: 15.

2 Ibn Maja, Tijarat, 1; al-Bukhari, Buyu’, 15.

When the question of which earning is most superior was asked to The Prophet Muhammad - *peace be upon him* - he responded: *"A person's manual labor and trade that is carried out honestly."*³

Sitting around aimlessly without working is something that is highly disapproved of in our religion. Allah's Messenger - *peace be upon him* - stated, *"Allah loves the believing craftsman who carries out manual labor."*⁴

It has been stated in another hadith: *"Even if it is that you take from your bucket of water and pour it into your brother's bucket and even if it is speaking with your Muslim brother with a smile on your face, do not trivialize anything of goodness. Be it a kind, polite and right word, job or action (if you can do it, do not waste a moment and do it!)"*⁵

Islam has forbidden people who have the ability to work and earn money from begging for money. The Prophet Muhammad - *peace be upon him* - expressed that: *"I swear by Allah that it is better for anyone of you to take a rope (and cut) and bring a bundle of wood (from the forest) over his back and sell it in order to ensure his own maintenance and his family's, rather than to ask the people who may give it (financial assistance) to him or not. You never know, if the person you ask for help from gives it, you will be indebted to them. If they do not, you will be humiliated."*⁶

Trade is exchanging a valuable commodity in return for another valuable commodity or for money. The ultimate aim of trade in our religion is not making money for whatever it takes, it is to serve people by supplying them with the beneficial things they need. By means of this, it is to make a normal and lawful earning.

The Qur'an mentions these qualities that are needed to be found in trade in this way; **"O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful. And whoever does that in aggression and injustice - then We will drive him into a Fire. And that, for Allah, is [always] easy."**⁷

Allah's Messenger himself carried out trade, was indebted, gave mortgage and was involved in a business partnership. In this way, he taught his companions how to carry out trade in a halal way by showing them this in practice.

INFORMATION BOX

The following qualities must be found in a legitimate trade:

- 1) The compliance of the buyer and seller,
- 2) Mutual good intentions and honesty,
- 3) The trade should not give harm to any of the parties involved in the transaction or to other people.

3 Ahmad b. Hanbal, Musnad, III, 466

4 Al-Munawi, Fayd al-Qadir, II/290

5 Abu Dawud, Libas

6 Al-Bukhari, Musaka, 13; Zakat: 50, Buyu', 15; Ibn Maja, Zakat, 25; Ibn Hanbal, Musnad, I, 167

7 Nisâ sûresi 29-30. âyetler

Reading Text

CALLOUSED HANDS



It was the ninth year of the migration and our Prophet (pbuh) was returning from the expedition he made to Byzantine.

The Muslims of Medina had gone all the way out of the city in order to welcome the Muslim army. Everyone was in a positive mood and there was a feeling of Eid in the air. Amongst the people who went out to welcome our Prophet and the Muslim army was the great companion Muadh b. Jabal. Muadh could not participate in the battle of Tabuk because of a disability he had.

Allah's Messenger (pbuh) had shaken each and every one of the hands of the Muslims who had come to greet him. He accepted all of their well wishes. During this time, he also shook the hand of Muadh. However, Muadh's hands were different from all the others; they were hardened and calloused. Our Prophet could not hold himself from asking:

- O Muadh why are your hands hardened? How did this coarseness and these calluses happen?

Muadh had thought that the hardness of his hands made our Prophet uncomfortable. He started to explain the state of his hands in an apologetic manner.

- O Messenger of Allah! I am working hard to earn the sustenance of my children and to ensure their nafaqa. A saw, chipping hatchet, pickaxe, shovel, and hammer can always be found in my hands. This is why they have hardened and been calloused.

Upon these words, our Beloved Prophet who was sent to the universe as Mercy, kissed the forehead of Muadh and said,

- Fire will not come into contact with these hands. The fire of Hell in the Hereafter will not touch these hands.

This incident offers great news for the Muslim employees who place importance in earning a permissible sustenance and who struggle to ensure the sustenance of their families.

The only condition required to be the receiver of this good news is to abide by Allah's commands, carry out the obligatory act of worship, and to abstain the things he has prohibited to us. In this way, actions that are carried out in this world will be in accordance with Allah's contentedness and will therefore bring the spiritual rewards of an act of worship.

This Prophetic saying makes clear how great an act of worship it is in the presence of Allah to try and work in order to earn a permissible sustenance and to ensure the sustenance of the family:

"There are some among the sins that cannot be made up by offering prayers, fasting, performing the major or minor pilgrimage. The only thing that can be considered as atonement is facing struggles and experiencing hardship whilst trying to earn a living."

B. THE RELIGIOUS NORMS FOR EARNING LIVELIHOOD

Working in order to earn the necessities of life is encouraged in Islam, but certain limits have been set when trying to acquire it. It is considered prohibited to trade things that have been made forbidden to use in Islam such as, alcohol, drugs, pork, idols, obscene items, and paintings.

A Muslim who is striving to ensure his/her sustenance must generally know the rulings that Islam has set forth in regards to the life of trade. It is obligatory for all Muslims to have a general knowledge of these rulings to be able to carry out transactions of buying and selling in a way that is compliant with the approval of Allah. To be a conscious Muslim on this topic, these factors regarding the obtaining of sustenance must never be forgotten:

1- Attention should be paid in acquiring earnings through permissible ways.

Islam considers it important to acquire earnings and property through permissible ways. It has forbidden earnings that are acquired by way of deceit, making false statements, enforcement, black-marketeering, benefiting from the hardships of the other party of the transaction, ambiguity, and exploiting risks. Interest, which means the profit of the capital without sharing the risks and labor, has been prohibited in Islam. The main ways of obtaining an unjust earning are through theft, extortion, bribery, misleading people on the matter of measuring and weighing, and gambling. Making an earning in such ways has also been prohibited in Islam. It has also been forbidden to profit from encouraging others into committing prohibited actions, such as selling alcohol and therefore encouraging its consumption.

Our Beloved Prophet has called attention to the importance of a permissible earning saying: *“O people, Allah is Good and He therefore, accepts only that which is good. And Allah commanded the believers as He commanded the Messengers by saying: “O Messengers, eat of the good things, and do good deeds; verily I am aware of what you do (23: 51). And He said, “O those who believe, eat of the good things that We gave you” (2: 172) He then made a mention of a person who travels widely, his hair disheveled and covered with dust. He lifts his hand towards the sky (and thus makes the supplication): “O Lord, O Lord,” whereas his diet is unlawful, his drink is unlawful, and his clothes are unlawful, and his nourishment is unlawful. How can then his supplication be accepted?”⁸*

“There is going to be a time when humankind will not mind if the thing he has gotten is permissible or prohibited. The supplication of such people will not be accepted.”⁹

Muslims are required to ensure their own sustenance and that of their family members. While they are trying to earn their sustenance, they should be careful of what is permissible and prohibited and watch the boundaries drawn by Allah Almighty. The following words of Abu Bakr explain the Muslim's obtaining of sustenance and their understanding of trade in the best way: “Only Hell fire is befitting to a body that has been nourished by haram.”

2- It should not be forgotten that Allah is the One who provides the sustenance and that there is no need to worry about it.

One of the names of Allah Almighty is Razzaq, which means the One who distributes His blessings amongst His creation; He is the One who gives more to whom he wishes and less to whom He wishes. Allah Almighty has predetermined and divided the sustenance of every living being even before the beginning of time.

Our Lord, who has sent us to this world in order to test us, states this matter in the Qur'an as follows: **“And if it were not that the people would become one community [of disbelievers], We would have**

⁸ Muslim, Zakat, 65

⁹ Muslim, Zakat, 65



made for those who disbelieve in the Most Merciful - for their houses - ceilings and stairways of silver upon which to mount. And for their houses - doors and couches [of silver] upon which to recline.”¹⁰

“And if Allah had extended [excessively] provision for His servants, they would have committed tyranny throughout the earth. But He sends [it] down in an amount which He wills. Indeed He is, of His servants, Acquainted and Seeing.”¹¹

“Do they distribute the mercy of your Lord? It is We who have apportioned among them their livelihood in the life of this world and have raised some of them above others in

degrees [of rank] that they may make use of one another for service. But the mercy of your Lord is better than whatever they accumulate.”¹²

3- Working should not be an obstacle to the acts of worship.

Being overly ambitious on the matter of accumulating wealth has been disapproved in Islam. When acquiring and managing goods and property, it should not prevent the owner of the property from performing his/her prayer and from obeying the commands and prohibitions of Allah.

Otherwise, the greatest loss will be incurred in this world and the Hereafter. It is stated in the Qur'an, **“O you who believe, let not your wealth and your children divert you from the remembrance of Allah. And whoever does that - then those are the losers (spiritually and financially).”**¹³

“Your wealth and your children are but a trial, and Allah has with Him a great reward.”¹⁴

Some people are overly attached to this world. Therefore all of their ideals, desires are all just for this world and the things they take pleasure in are once again benefits of this world. Because of their devotion to this world, they like to live as if the life in this world will never come to an end.

4- One should strive to find a good and suitable job to ensure the sustenance.

All occupations are different from one another. The best thing to do is to prefer an occupation that is most appropriately fitted to the person's nature. However, when in the process of choosing an occupation, one should be sure that it is lawful in Islam.

Every occupation, trade, and industry that Muslims are in need of is considered to be obligatory upon every believer individually. Islam also does not encourage all people to choose just one occupation. For example, although our Prophet (pbuh) encouraged working in agriculture, he also brought attention to the danger of engaging in just that sector and thus neglecting other occupations and sectors. He stated that: *“If you deal in usury and hang onto the tails of cows, if you become satisfied with cultivation and cease to take part in Jihad, Allah will inflict a humiliation upon you which will not be removed until you return to your religion.”*¹⁵

10 Zuhurf sûresi, 33-34. âyetler

11 Şûra sûresi, 27. âyet

12 Zuhurf sûresi, 32. âyet

13 Al-Munafiqun, 63: 9.

14 Al-Taghabun, 64: 15.

15 Abu Dawud, Buyu', 56

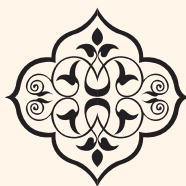
Islam has forbidden all crafts and occupations that are harmful to the community's beliefs and customs. It has declared earning money through such ways prohibited. Some of the branches of occupations and crafts that Islam considers haram are as follows:

Jobs that arouse sexual feelings: In Islam, limits have been set concerning the relationship between man and woman. For instance, it has been forbidden to earn a living by becoming a secretary in where there is a possibility of being alone in a room with the opposite sex, and also by massaging the opposite sex. Even if performances that arouse sexual feelings such as dance, ballet and obscene plays are accepted in the world of art, they are not considered permissible in Islam. Jobs such as singing, photo modeling and modeling are not approved in Islam.

Jobs whose subject and purpose is prohibited: Amongst these jobs are operating a casino, sculpturing, painting, and photography based on capturing obscene photos. Because Islam is against polytheism, it does not give consent for the carrying out a job that leads to polytheism. For example, it is not lawful to participate in the making of a painting or sculpture that is considered to be obscene or that can lead to polytheism.

Jobs that are involved in the production and selling of intoxicating substances: Islam has forbidden the production, trade, transportation, and selling of alcohol and drugs. It has also forbidden Muslims from working in places where alcohol is sold.

Jobs that cause for an entirely haram earning: Deeds such as theft, brigandage, loansharking, extortion, and creating an environment of terror cannot be accepted as permissible jobs and nor can they be carried out in Islam.



Reading Text

LAWFUL GOODS THAT BELONG TO A PIOUS PERSON

Once Imam Abu Hanifa asked the price of a piece of silk clothing to a woman who was selling it. When the woman said, "O Imam, it is one hundred dirham!" he objected to this and said, "No, this is worth more than that ...". The woman who was surprised added an extra one hundred dirham to the price. Once again, Imam objected to it. She increased the price to an extra one hundred dirham, then one hundred more

When Imam said, "No, this is worth more than four hundred dirham" the woman could not hold herself from saying: "O Imam, are you making a fool of me?"

Upon this Imam Abu Hanifa called for someone who knew the actual price of the commodity in question. The person who came claimed that the price of the clothing was five hundred dirham so Imam Azam bought it from her for that price.

On another occasion, he sent his partner Hafs bin Abdurrahman to sell some goods, and said to him: "O Hafs! This good has such and such defects. This is why you should tell it to the customer in advance and sell it for a lower price!"

So Hafs sold the commodity for the price the Imam had specified but he had forgotten to tell the customer about the defects it had. When Abu Hanifa learned of this situation, he asked Hafs, "Do you know the customer who bought it?"

When Hafs said that he did not know the customer, the Imam distributed all of the earnings made from that transaction as charity. Because he, in every way, lived in accordance with the truth that Allah's Messenger - peace be upon him - made clear: "*How pleasant are the nice goods in the hands of a pious person!*" and he acted with measures of fear from Allah when it came to the matters of permissible and forbidden.



EXAMINE

What type of punishments can be found in the laws in regards to varieties of sales that are not in accordance with the Islamic religion? Examine what the prohibition of interest does and does not encompass.

C. THE RIGHTS AND RESPONSIBILITIES OF THE EMPLOYERS AND EMPLOYEES**a) The rights and responsibilities of the Employer:**

The main responsibility of the employer is to pay the fee of the employee as it was decided in the contract. The Prophet Muhammad stated, *“Give the worker his pay before his sweat gets dried.”* He has informed us that those who do not pay the workers’ rights will have to answer to Allah on the Day of Judgment.

The main responsibilities of the employer are to act kindly towards the employees and to recognize the employees’ basic rights and freedoms.

The responsibility of the employer to give the job to someone who is eligible for the work is also very important. The Prophet Muhammad stated, *“The person who prefers and employs someone because of their closeness to him, when there is a person who is more capable and deserving of the job, betrays Allah, His Messenger and all Muslims.”*

b) The rights and responsibilities of the employee:

The employee is required to show the necessary attention and care when carrying out his job and also to work during the time of work and to fulfill his obligation, excluding those times he needs to fulfill his legitimate needs. Our Prophet stated, *“There is no doubt that Allah Almighty would be very pleased when one of you carries out his/her job in the right way.”* It can be seen as stealing from the employer’s property when the employee engages in activities that contradicts the employer’s knowledge and orders during work hours and also when he does not work.

The employee is also responsible for the care and protection of tools, materials, and equipment that are given to him. He is responsible for compensating for the damages he causes the employer when he does not show the necessary care in carrying out his job and for the damage he causes due to his faulty and deliberate actions.

When we take into account the rights and responsibilities of both sides, it can be seen that the relationship between the employee and employer should not be seen as different than other human relations. The rights of employees should not also be seen as different than other human rights. The object of general Islamic principles and purposes is not for a particular group of people to live in luxury or hardship, but it is for the benefit of society and for hardship to be shared together and in a fair way. These principles are very important in developing a strong bond between the employee and employer based on mutual respect, love, and justice.

D. THINGS THAT ARE PROHIBITED IN BUSSINESS LIFE**I. Acquiring Goods through Prohibited Ways**

Our Lord Almighty states in the following verse, **“O you who believe, do not consume one another’s wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.”**¹⁶

Acquiring goods through prohibited methods is done in the following situations; taking bribes, committing theft, extorting someone else’s property, counterfeiting money, moving public property to one’s own private property.

¹⁶ Al-Nisa, 4: 29.

Bribery is to offer something to an official in order to get an illegitimate gain or ease desired when carrying out a particular job. In other words, it refers to the goods or money given to an authority figure in order to gain an illicit advantage. It is forbidden or haram in Islam to give and take something or be of assistance to gain an illicit advantage. This is because bribery makes a fair thing appear unfair and unjust thing seem fair. In this way, it prevents justice from taking place. It is stated in the Qur'an, **"And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]."**¹⁷

Bribery will bring about negative results to society in the way that it does for people. Injustice will increase in a place that bribery is prevalent. There will no longer be security and trust. The social order will be destroyed. This is why our Prophet stated, *"Whoever takes or gives a bribe will be in Hell."*¹⁸



Theft is a sin that is considered to be one of the greater sins and one that should be prevented through serious punishments in the Qur'an: **"[As for] the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise."**¹⁹

Extorting, to forcibly take someone else's property from their hands is a sin.

Muslim jurists such as Imam al- Nawawi and al-Ghazzali show the way to repent for those who regret after making an unlawful gain:

"First he should sincerely regret, stop committing this unlawful act, and then strongly determine not to commit the same sin again.

After that, he should return the property that he unlawfully obtained to its rightful owner, if the rightful owner is known. If the rightful owner is not known, he should give it to the head of the Muslim state in order to be spent for the benefit of Muslim society such as building bridges, schools, roads, etc. or spending it to the needs of the poor.

If the head of the Muslim state is not a trustworthy person, he should give the unlawfully gained property to pious, trustworthy, and knowledgeable Muslim who will spend it in the way mentioned above. If he cannot find a trustworthy person, the he will do the same thing himself.

If he does not have any other lawful wealth in addition to the property gained unlawfully, he may use some of this property just like the other poor people do.²⁰

II. Engaging in Sales that Lead to Haram

Selling the commodity before having it in your hands, selling something that does not exist, taking part in destructive competition by carrying out profiteering, monopolism and black-marketeering are all examples of sales that can lead to the implementation of haram actions.

17 Al-Baqara, 2: 188.

18 Al-Tirmidhi, Ahkam, 9; Abu Dawud, Aqdiya, 4; Ibn Maja, Ahkam, 2.

19 Al-Maida, 5: 38.

20 Al-Nawawi, *al-Majmu'*, IX, 388.

A commodity should not be sold before it is in the hands of the person. Allah's Messenger (pbuh) states, *"Do not sell a piece of food you have bought until you actually have it in your hands."*²¹

A commodity that does not exist should not be sold. Allah's Messenger (pbuh) stated, *"Do not sell what is not next to you."*²²

One must not profiteer. Ihtikar (or profiteering) means to hoard goods (especially food items) needed by people, keep them in storages, and not to sell them until their price goes up. Allah's Messenger (pbuh) referred to the people who profiteer as sinners and cursed people in his following saying, *"One who brings goods to the market is marzuk (blessed with provisions), and one who engages in profiteering is cursed."*²³

III. Engaging in Trade with People who Earn a Haram Living

The most important issue a Muslim who engages in trade should place importance in is refraining from selling items that have been rendered haram. If Allah has made something haram, he has also made the money earned off it haram as well.

It is prohibited to sell weapons to highway men, or to sell woods to the musical instrument producer. Because the thing that leads to the implementing of haram is also considered haram. It is stated in the Qur'an: **"And cooperate in righteousness and piety, but do not cooperate in sin and aggression."**²⁴

A Muslim should avoid variations of productions and trade that will lead to prohibited actions and behavior and also make it possible for haram to become stronger and more prevalent. This is why the money paid to singers that help the development of an obscene environment is considered to be haram.

After the following verse prohibiting the consumption of alcohol was revealed; **"O you who have believed! Indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful."** (Al-Ma'idah, 5: 90) Our Prophet also banned the sale of alcohol and said, *"There is no doubt that Allah has made alcohol prohibited. For the person who has alcohol near them at the time of learning of this verse, he should not drink nor sell it."*²⁵ It is stated in another hadith: *"Allah Almighty, who has made the consumption of it haram, has also made the sale of it haram."*²⁶ Selling grapes to a place producing wine is also prohibited. *"The Prophet - peace be upon him - has cursed ten people on the matter of alcohol: The crusher (the one who produces it), the one for whom it has been crushed, the drinker, the transporter, the one for whom it has been transported, the one who has other people drink, the seller, the one who spends the money earned from it, the one who buys it and the one for whom it has bought..."*²⁷

It is not a valid sale to sell a medicine is produced from an originally impure material such as wine. In like manner, selling idols and the like is prohibited in Islam. A Muslim butcher's selling the meat of animal that was not slaughtered by mentioning or remembering Allah's name is an example for the similar situations. Because if Allah's name is not deliberately mentioned when an animal is being slaughtered, its meat is considered to be haram.

It is also not lawful to sell or put a stolen item on the market. The Prophet Muhammad – peace be upon him - stated, *"Whoever knowingly buys a stolen item will be part of the sin that was committed and its lowness."*²⁸ Therefore, a Muslim who engages in trade must be careful of these matters when buying and selling a commodity.

21 Al-Bukhari, Buyu', 112

22 Abu Dawud, Buyu', 68

23 Ibn Maja, Tijarah, 6

24 Al-Maida, 5: 2.

25 Muslim, Musakat 67

26 Abu Dawud, Buyu', 64

27 Al-Tirmidhi, Buyu', 59

28 Al-Bayhaqi, Sunan, V, 336

IV. Dealing with Interest (Riba)

The topics that should be best known about trading are the ones concerning interest. This is why detailed information will be provided below.

Usury (interest) was an important means of earning money that Arabs, especially those who were of a higher stature, benefited from. It was not appropriate to abolish it (interest) in one step. This is why the definite banning of interest took place with some of the last verses that were revealed in Islamic history. The condemnation of interest and the explanation of the disasters that past nations had faced for carrying out usurious transactions were, however, expressed in the early years of Islam.

The ruling about the prohibition of interest is expressed in the following verses which were revealed in the eighth or ninth years of the hijrah, **“O you who believe! Fear Allah and give up what remains [due to you] of interest, if you should be believers. And if you do not, then be informed of a war [against you] from Allah and His Messenger. But if you repent, you may have your principal - [thus] you do no wrong, nor are you wronged.”**²⁹

It is clearly expressed in the Qur'an that wanting an extra amount of money in return of a loan (riba) is prohibited: **“O you who believe! Do not consume usury, doubled and multiplied, but fear Allah that you may be successful.”**³⁰

As it is expressed in the Qur'an, when the interest was banned, the Arabs said, **“Trade is just like interest.”**³¹ Upon this, Allah Almighty has made it clear that these two transactions are different from each other by the following answer: **“But Allah has permitted trade and has forbidden interest,”**³² and then He stated, **“Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity.”**³³

The Messenger of Allah (pbuh) touched upon the application of the interest ban in his Farewell Sermon: *“Be careful, the usury of pre-Islamic period is abolished, and the first of our usury I abolish is that of ‘Abbas b. ‘Abd al-Muttalib, for it is all abolished.”*³⁴ *“Know that, all the types of interest that were prevalent in the time of the ignorance have been abolished. You shall have your capital sums, deal not unjustly and you shall not be dealt with unjustly.”*³⁵

THE UNDERLYING CAUSE ('ILLAH) OF RIBA

Interest may occur in trade with gold and silver as well as food items such as wheat, barley, date, and salt. These and other commodities which have the same underlying causes are called ribawi commodities.

There are two underlying causes for interest bearing transactions: which are thamaniyya (being used as money) and tu'miyya (being food items). Thamaniyya means being gold, silver, and money coined by them, while tu'miyyah means being food items. Imam Shafii used the following hadith when determining the underlying cause of interest: *“Gold is to be paid for by gold, silver by silver, wheat by wheat, barley by barley, dates by dates, and salt by salt, like for like and equal for equal, payment being made hand to hand. If these classes differ, then sell as you wish if payment is made hand to hand.”*³⁶

29 Al-Baqara, 2: 278-279.

30 Al Imran, 3: 130.

31 Al-Baqara, 2: 275.

32 Al-Baqara, 2: 275.

33 Al-Baqara, 2: 275.

34 Muslim, Hajj, 147

35 Abu Dawud, Buyu', 5

36 Muslim, Musakat, 81; Abu Dawud, Buyu', 12; Tirmidhi, Buyu', 22

TYPES OF RIBA

I. Riba of surplus or Riba of Excess (Riba al-fadl)

A type of riba that exists in, or results from, a sale transaction whose underlying is a ribawi item. Riba of surplus or riba al-fadl comes into existence in a sale transaction that involves the exchange of one ribawi commodity/ribawi item (such as dates, wheat, etc.) for the same type of commodity but different amount or weight. For example, the exchange of 10 kg of excellent-quality dates for 20 kg of poor quality dates. In simple terms, riba al-fadl arises from the exchange between two items of the same type, but in unequal amounts, whether in terms of quality like for like (mithlan bi mithl) or hand to hand (sawa-an bi sawa-in) or in terms of delivery time (spot or yadan bi yad). In this regard Allah's Messenger (pbuh) said, *"Gold is to be paid for by gold, silver by silver, wheat by wheat, barley by barley, dates by dates, salt by salt, like by like, payment being made hand to hand. He who made an addition to it, or asked for an addition, in fact dealt in usury. The receiver and the giver are equally guilty."*³⁷

When exchanging things that are subject to interest in return for their own kinds, the difference between the qualities of the two goods in question is not taken into account. Those who want to exchange higher quality seeded wheat for edible lower quality wheat must either make an exchange in equal amount and the exchange must be up-front or they can sell the wheat in exchange for money and then actualize the sale. Thus, Prophet Muhammad said to Bilal (r.a.) when he exchanged two measurements of average dates for one measurement of good quality dates: *"Beware! Beware! This is definitely Riba (usury)! This is definitely Riba (Usury)! Don't do so, but if you want to buy (a superior kind of dates) sell the inferior dates for money and then buy the superior kind of dates with that money."*³⁸

According to Shafii School, when exchanging two items of same type, it does not become usurious unless exchanging the items in unequal amounts. Even if the quality of the items is different, they must be exchanged in the same amount. For example, if one exchanges 5 grams of gold with 5 grams of gold ornaments which are more valuable due to craftsmanship, it becomes a valid sale.³⁹ Because the underlying cause for interest in gold and silver is their feature of being monetary value, Imam Shafii did not see any difference between being in bullion or ornaments.

II. Riba in Credit Transactions (Riba al-Nasi'ah)

This type of riba that exists in, or results from, a sale transaction which unduly benefits one the counterparties in the form of a surplus or extra amount due to delay of delivery of his side of the transaction. An example for sale-based riba al-nasi'ah is a sale of 100 kg of dates to be paid back with 200 kg of wheat six month later. The requirement of exchanging such items (ribawi items) hand in hand is expressed in a hadith as follows, *"There is no harm exchanging gold for silver, even if silver is more, as long as the exchange is done on the spot. However, such a transaction is not acceptable if the payment is deferred."*⁴⁰

Another type of riba, which is considered a sub-division of riba al-nasi'ah, is riba al-qard or interest on loans. Riba al-qard arises in loan transactions on the basis of future repayment of more than the principal. This is the type of interest practiced in pre-Islamic period and is strongly prohibited by Islam. Allah Almighty commanded believers to stay away from it as follows, **"O you who believe! Devour not usury, doubled and multiplied; but fear Allah; that you may (really) prosper."**⁴¹

All kinds of loan which provides additional benefit to the creditor is interest. An example of loan-based riba al-nasi'ah would be a loan of \$1,000 stipulating the payment of \$1,200 next year or stipulating to work for the creditor for one day for free. This is interest and is prohibited.

37 Muslim, Musakat, 82; al-Nasai, Buyu', 742

38 Al-Bukhari, Wakala, 11

39 Al-Shafii, al-Umm, III, 25

40 Abu Dawud, Buyu', 12

41 Al Imran, 3: 130.

Muslim jurists today consider all kinds of excess amount paid in exchanges due to differed payment as *riba al-nasi'ah*.

III. Delivery Interest (Riba al-yad)

Delivery Interest (Riba al-yad) happens when one or both of the commodities of an exchange transaction is delivered after leaving the place of transaction. The Prophet' (pbuh) saying, "*do not sell what is not present at the moment of exchange for what is present*"⁴² shows that the commodities in a transaction should be delivered to the other party at the time of transaction.

Therefore, exchanging ribawi commodities is permissible provided that the following three conditions are observed:

1. Both ribawi commodities should be in equal amount.
2. Both ribawi commodities should be present at the time and place of transaction.
3. Both commodities should be exchanged at the same time and on the spot.⁴³

If the food items are exchanged with gold and silver, the above-mentioned conditions are not required.

IV. Fraud and Deception

There is no limit set as to how much one can profit in Islam, but it has been forbidden to lie, cheat, hide the defects of a commodity to be sold, or to boast of a quality which the commodity does not possess in the practice of trade. Thus, it is not lawful for believers who engage in trade to mislead one another using fraudulent methods and to sell a commodity at a very high price using these methods.

In Islam, every earning that is made through fraud, lying, and trickery is forbidden. It is definite that this type of earning will negatively affect the individual's acts of worship, personal and family life. Therefore, if a mistake has been made and this type of earning has been acquired, this earning must be returned to its owner. If this earning is for some reason unable to reach its owner, it should be parted with by immediately being used for a good cause without the expectation of receiving any spiritual rewards. It should however not be forgotten that this is still insufficient for trying to get rid of the sins committed and violation of someone's personal rights. Allah's Messenger (pbuh) warned tradesmen and merchants as follows: "*O community of merchants! Because unprofitable speech and swearing in vain (swearing for a lie) are always interfering with the practice of trade, you should try to make it up by giving charity.*"⁴⁴

One day when our Prophet was walking around the bazaar, a heap of wheat caught his attention. When he put his hand into the wheat, he noticed it was wet. Then, he asked the seller, "What is this?" The seller replied, "O Messenger of Allah! Rain poured on it, because of this it is moist." Upon this, our Prophet (pbuh) said to the man, "*It would be good if you put the wet parts on the top so that the people can see! Someone who cheats us is not one of us.*"⁴⁵



42 Al-Bukhari, Buyu', 77, 78; Muslim, Musakat, 75, 77

43 <https://sorularlailamiyet.com/kaynak/safi-mezhebine-gore-faiz-ile-ilgili-hukumler-nelerdir>

44 Abu Dawud, Buyu', 1

45 Muslim, Iman, 164; Abu Dawud, Buyu', 50

Ghabn al-fahish (excessive profiteering) means to buy something for a price more than its market value (thaman al-mithl). For example if the market value of an item is \$100, buying it for \$120 is called ghabn al-fahish (excessive profiteering). If there is deception of the buyer in such a transaction, it gives the buyer the right to terminate the transaction. Because it is a general principle in Islam that no one should incur losses and be treated unjustly is dominant. When it is made aware that damage and injustice have taken place, this should be eliminated in a way as fairly as possible.

According to Shafii School, blind people's and children's contracts of exchange are invalid due to the risk of deception. According to Hanafi School, the transactions of a child with the ability to discern what is right and what is wrong is valid if the child's guardian approves. A blind person may carry out transactions with the risk of deception by asking an option for three days to think about.⁴⁶

According to Shafii School, it is not permissible to sell things that have not been seen. According to Hanafi School, both sides of a transaction may conclude a sale transaction on a commodity that they have not seen.

According to Shafii School, sale of movable and unmovable property before taking the delivery is not permissible. According to Hanafi School, it is permissible for unmovable properties.⁴⁷

V. To Be Involved In Unfair Competition

It is forbidden to carry out practices that are harmful to others in the economic life. Our Prophet (pbuh) pointed out this matter as follows, *"Carry out a job in the way you think is acceptable. Do not carry it out just so that you may compete with others ..."*⁴⁸

Below are some of the practices that may lead to unfair competition,

Najash Sale (Increasing the price by provoking the customer through fake customers)

This is when a person who is not actually a buyer, interferes in a transaction by provoking the customer with the aim of trying to increase the price. Our Prophet (pbuh) said, *"You should not try to cancel the purchases of one another (to get a benefit thereof)."*⁴⁹ The seller and the person who increases the price by provoking the customer will both have participated in a sin. This type of sale is forbidden in Islam.

It is possible and lawful to sell a commodity to a person who proposes the highest price at an auction or closed bidding. Allah's Messenger sold a poor companion's belonging to the person who proposed the highest bid at an auction. However, there should be no cheating involved in the auction. In our present day, this method is seen to be used often, especially in auctions. Even though they are not actual buyers, there are people who pretend to be buyers and interfere in an auction with the aim of increasing the price. They sometimes increase the price or they sometimes pull themselves out of an auction to ensure that the commodity is sold at a very low price in exchange for a benefit they will receive. In such cases, the buyer gets benefited instead of the seller.

Making an offer upon someone else's offer

In matters of trade, Islam asks Muslims not to harm one another, not to create a reason for disagreements, and not to make an extra benefit. Making an offer for a particular commodity after the seller and a buyer have already agreed upon that commodity and its price will open the way for the conflict of interest. It is also forbidden in Islam to make an offer by saying "I would pay more" while the seller and buyer are

46 Hanefi ve Şafi fıkında ihtilaflı meseleler, *Hasip Asutay*, p. 82, 85

47 Hanefi ve Şafi fıkında ihtilaflı meseleler, *Hasip Asutay*, p. 84

48 Al-Tirmidhi, *Birr*, 63

49 Al-Bukhari, *Buyu'*, 58, 64

still working on a deal. The Prophet (pbuh) warned the believer in this matter as follows, “A buyer should not urge a seller to restore a purchase so as to buy it himself.”⁵⁰

The Ban on Talakki al-Rukban (Stopping caravans on the road)

An illegal practice (particularly an exploitative commercial arbitrage) in which a city dweller purchases goods from a Bedouin (desert dweller) or a villager at a far lower price before the latter enters the market. Thereafter, the buyer brings those goods into the market and offers them for sale at much higher prices. In so doing, the town dweller takes advantage of the Bedouin's or villager's ignorance or unawareness of the market price. Before the advent of Islam, people used to practice this form of manipulative trade by buying off full caravan loads before the caravan arrives in the market place. Islam prohibited this exploitative act. This is stated in the hadith: “The Prophet Muhammad (pbuh) has forbidden stopping the people who are bringing goods to the market, in other words he has forbidden buying commodities off them on the road before they arrive at the bazaar.”⁵¹ The seller who is deceived in such a sale has the right to revoke the transaction, if he wishes.



The townsman making a sale on behalf of the villager

Islam has aimed for a trade environment that is free from outside interferences, that is open to competition within its own structure, and that is smooth and transparent. This is why precautions have been set so that the vegetables and fruit producers will not be tricked when they are trying to sell off their goods.

It is reprehensible for the person from the city to stock the products of the villagers, and to put them out on the market with the title of commissioner. It has been stated in a hadith: “The Prophet (pbuh) has forbidden the person from the city to carry out a sale on behalf of the villager, even if this person is the villager's father or sibling.”⁵²

According to the following hadith narrated by Jabir b. ‘Abdullah clearly expresses this purpose, “A town dweller should not sell the goods on behalf of the desert dweller. Leave people be. Allah blesses some of these people because of the other people.”⁵³

Bay al-’inah: refers to a round-tripping sale (or double sale) in which one party (actually the lender) sells another (actually the borrower) an object (commodity, asset, etc). for a given price on credit (deferred price) and simultaneously repurchases it for a lower price. The net result of this fictitious transaction is an interest-bearing (riba-based) loan- impermissible under Islamic law.

Allah's Messenger (pbuh) said, “When you enter into the ‘inah transaction, hold the tails of oxen, are pleased with agriculture, and give up conducting jihad (struggle in the way of Allah). Allah will make disgrace prevail over you, and will not withdraw it until you return to your original religion.”⁵⁴

50 Al-Bukhari, Buyu', 58, 64

51 Al-Bukhari, Buyu', 72.

52 Muslim, Buyu' 21

53 Al-Bukhari, Buyu', 58, 64

54 Abu Dawud, Ijarah, 47; Malahim, 10; Ahmad b. Hanbal, II, 42

In respect to bay al-'ina, Muhammad b. Hasan al-Shaybani states as follows, "This type of sale invented by the people who deal with interest feels in my heart like as heavy as mountains." Imam Shafii shares the views of Imam Muhammad about bay al-'inah.

Sale with a fasid condition

A condition which aims to ensure a greater benefit to either the buyer or the seller is called "a fasid condition." These are the conditions that provide only one sided benefit for the seller or the buyer.

For example; a sales agreement will be considered as fasid according to Hanafi School in certain situations such as when a seller sells his house with the condition that he live in it for another year; sells a land with the condition that the owner plants on it for a year; sells a car with the condition that the owner uses it for a month and then gives it to the buyer or when the buyer makes a sale with the condition that a loan or a donation is given to him in return. Because when there is a greater benefit involved for one of the parties of an agreement, it is considered as riba (interest). Because in such agreements of sale, this is an excess for whose worth nothing can be found. The following saying of the Prophet Muhammad makes this matter clear: *"The Prophet has forbidden making two agreements in the one agreement."*⁵⁵

According to Islam, the importance has been given to the following principles; people should not cheat each other in their daily transactions; people should not try to use another person's difficult situation in order to try and acquire more benefit; and Islam tries to remove the reasons that make way for both sides to be in disagreement. Amr b. Shuayb recounted from his father, who related from his father Abdullah b. Amr b. el-As (d. 61/680) that the Prophet (pbuh) stated the following: *"It is not permissible to loan and also sell at the same time, to make two agreements in the one agreement, to profit from something that does not undertake the responsibility of compensation and to sell something that is not with you."*⁵⁶ *"It is not permissible to loan and also sell at the same time and to have two conditions in one agreement."*⁵⁷

It is not permissible to make a sale before the price is clearly agreed. In other words, it is not permissible in an exchange transaction, to set up two separate prices, one for selling a commodity upfront and another price for a sale with deferred payment but the parties of the sale do not clearly express which price they choose.

VI. Trades that are prohibited due to uncertainty

Islam aims to remove uncertainties and risks (gharar) from the practice of trade that could lead to disagreement of one of the parties. There are many examples in the sayings of the Prophet about trade in which it may result the seller or buyer being cheated or trade in which it is difficult to deliver a commodity that has been sold.

There is a consensus on the matter of the sale of something that does not yet exist is invalid. Such as selling the offspring of an animal that is not yet born or selling the fruit or the crop before it has grown. Because these goods do not yet exist at the time of the sale or because they have the risk of not to come into existence, these kinds of sale contracts are deemed invalid.

It is not permissible to sell the wool or hair of an animal while it is still on the animal due to gharar.⁵⁸ The Prophet (pbuh) stated in a hadith, *"Do not buy the fish in the water, because there is an uncertainty (gharar) in this situation."*⁵⁹

55 Ibn Hanbal, I, 394

56 Abu Dawud, Buyu', 68

57 Al-Bukhari, Buyu', 73

58 Hanefi ve Şafi fikhında ihtilaflı meseleler, *Hasip Asutay*, p. 83

59 Ahmad b. Hanbal, I, 288

If the lack of knowledge regarding the goods or their price is little or unimportant, this will not affect the sales agreement. For example, it is permissible selling one kg out of a pile of a food item.⁶⁰ It is not lawful to buy the fish bred in special pools or gathered in special divisions of the pools before they are caught. Because as it is possible to see the species and the quality of the fish, there is also a risk of being cheated when catching the fish.

For this reason, it is accepted as permissible to sell plants with shell such as walnuts, almonds, peanuts, watermelon and melon in their shells; and plants such as wheat, rice and sesame whilst they are in their ears. It will not lead to disagreement between the parties when a bag of fruit etc. is bought but when the amount is unknown. Buying these kinds of things presented in this way have become customary, that is why it will not lead to disagreement. This is why the sale will be valid.

There is a consensus that the sale of fruits and crops that have not yet emerged is invalid. The Prophet Muhammad (pbuh) said to Hakim b. Hiza; *“Do not sell what you do not possess.”*⁶¹

There may exist some uncertainty regarding the subject of a sale, its price or the instalments. If one sells an animal without clearly describing its breed, or a camera without telling its brand, there exists too much uncertainty in such sales. This is called ghabn fahish (fahish jahalah) or excessive uncertainty and risk. Such level of uncertainty leads to disputes between the parties of a sale. If the seller demands a surety or guarantee from the buyer for a sale with deferred payment, the surety or guarantee must be clearly defined and known by the parties. Otherwise, the sale will be fasid (invalid).⁶²

VII. Engaging in Trade at the time of Worship

Our Almighty Lord has made it obligatory to pray the Friday prayer on the day of Friday. It is stated in the Qur'an: **“O you who believe! When [the adhan] is called for the prayer on the day of Jumu'ah [Friday], then proceed to the remembrance of Allah and leave trade. That is better for you, if you only knew. And when the prayer has been concluded, disperse within the land and seek from the bounty of Allah, and remember Allah often that you may succeed.”**⁶³

It is required for those who are obligated to perform the Friday prayer to leave whatever they are doing at the time of the Friday prayer and rush to the prayer. Everyone is required to attend except handicapped men who cannot join the congregation, non-Muslims, women, and children. During Friday prayer time, except those who have a valid excuse such as those who are security guards on duty, a watchmen, sick, disabled, sick nurse, it is considered obligatory upon each and every one of sane Muslim men, who have reached puberty to leave their engagement in trade or their other jobs and go to the Friday prayer in the region where the Friday prayer is being prayed.

The moment that the work should be stopped starts when the imam walks up the pulpit to deliver the sermon and it continues until the end of the obligatory prayer. It is haram and invalid to make trade at the time of the Friday prayer.



60 Al-Shirazi, al-Muhadhdhab, I, 263

61 Abu Dawud, Buyu', 70

62 Al-Sarakhsi, al-Mabsut, XIII, 26, 49; al-Shirazi, al-Muhadhdhab, I, 266

63 Al-Jumu'ah, 62: 9-10.

VIII. Selling Items that are not Lawful to Trade (Buying and Selling)

If something is lawful to be benefited from by eating, drinking or in any other ways, its buying and selling is also lawful. Allah Almighty states: **“It is He who created for you all of that which is on the earth.”**⁶⁴ **“It is He who made the earth tame for you - so walk among its slopes and eat of His provision - and to Him is the resurrection.”**⁶⁵

If something is declared to be unlawful to be benefited from by eating, drinking or in any other ways through the verses and sayings of the Prophet (pbuh), its buying and selling is also unlawful. Our Prophet states in this way: *“When Allah makes something haram He also makes the earnings made from it haram too.”*⁶⁶

Things that have been prohibited to eat and drink in verses and hadiths, due to a harm they may cause, are considered to be “najis” (impure). We can count wine, pork or meat of a dead animal and blood as examples of these. The sale of things that Islam does not have any value according to Islamic law such as wine, the meat of carrion, or flesh of the pig, is considered to be invalid.

According to Shafii School, it is not permissible to sell gold and silver ornaments because it is not permissible to use them. In like manner, it is not permissible to sell manure, hair and horns of a carrion due to their impurity. According to Hanafi School, their sale is permissible.⁶⁷

In our present day, making blood transfusion to bleeding patients or people who have undergone an operation has come to be a necessary method of treatment. If blood is not given, the patients may die because of blood loss. This is why the blood that is unlawful for the healthy person becomes lawful for the sick ones; because the principle of “necessities makes unlawful things permissible” gives ease to Muslims in tight situations.

The majority of the scholars consider the selling of dogs as unlawful, because in one hadith the Prophet Muhammad forbids the consuming of the money earned from selling a dog, the money paid to the prostitutes, and the money received by the soothsayers.⁶⁸ Some scholars have informed that if there is a reasonable purpose such as for hunting and watching, it is possible to sell dogs.

Springs, water reserves, or wells that belong to a particular community and also water that has been filled in special containers are all considered to be private property. The owners may sell and benefit from such water. Authorities however might say to owner of such water when there is a water shortage; “Either fill up the water yourself and give it to the person in need, or give permission for them to retrieve the water.” The lawfulness of water being exchanged for money is backed up by the following evidence: Uthman had bought a well named Rumah from a Jew in Medina and he endowed it to the Muslim community. He did this because the Prophet Muhammad had stated in relation to this well: *“Whoever buys the well of Rumah and thus offers a great comfort for all Muslims will have a place in Jannah.”*

According to Islamic law, the usage of water is considered free (*mubah*) so long as it is not a part of someone’s private property. Everybody has the right to use the things that are accepted as *mubah*. Therefore, they are common property and everyone has the right to benefit from sea and river waters. Every individual who has the right to benefit from the sea also has the right to use it for the purpose of watering plants or cleaning. The Prophet (pbuh) stated, *“Muslims are partners regarding three things: Water, grass and fire.”*⁶⁹ This is why these three economic values should be presented to the service of society without being made an object of trade.

64 Al-Baqara, 2: 29

65 Al-Mulk, 67: 15.

66 Abu Dawud, Buyu’, 38, 63, 64

67 Hanefi ve Şafi fikhında ihtilaflı meseleler, *Hasip Asutay*, p. 84

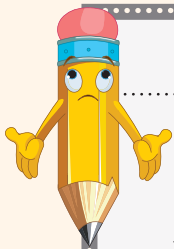
68 Al-Bukhari, Buyu’, 113.

69 Abu Dawud, Buyu’, 60.



EVALUATION ACTIVITIES

1. What are the ways of acquiring a halal earning? Explain.
2. Give information about the matters a Muslim businessman must be careful of.
3. What are the principles our Prophet has set forth in relation to the life of trade? Clarify.
4. Find out the verses about interest in the Qur'an and write them down.
5. Give five examples from our Prophet's sayings related to trade.
6. What are the basic rights and responsibilities of the employer and the employee in Islam? Explain.
7. Write down the forbidden practices in the trade life.



TRUE FALSE QUESTIONS



1. () Islam has forbidden begging for a person who is capable of working and earning money.
2. () As long as there is mutual consent, the selling of everything is lawful in Islam.
3. () Even if obscene plays are accepted in the world of art, they are not considered halal.
4. () Islam has forbidden even transporting and selling of alcohol and also working in a place where alcohol is sold.
5. () It is possible to prefer someone for a public service just because you are close to them, even if there is a more capable and deserving person for the job.
6. () The worker is responsible for compensating the employer when they do not show the needed care while carrying out their job and when they give harm to the employer as a result of their mistakes.
7. () Just like the one who takes bribe will go to hell, it is accepted that the one who gives the bribe will also go to hell.
8. () The sale of a medicine made from originally impure (najis) material is permissible
9. () If a person buys all of the goods off a market and stocks it all in the hopes of making a high profit, and then sells it. This action of his will not be lawful.
10. () The ones who want to exchange high quality wheat for lower quality edible wheat must actualize this exchange upfront.
11. () There is no harm to sell a commodity with differed payment and then buy with advance payment for a price lower than the deferred price.
12. () It is possible and lawful to sell a commodity to the person who proposes the highest bid in an open auction or closed bid.



MATCH THE PAIRS

1	Razzaq		Exchanging a commodity for money or another commodity
2	Working		The effort and energy exerted in order to get a job done
3	Rizq		The continuous job that must be carried out by a person in order to make a living
4	Trade		The things bestowed upon living beings by Allah Almighty to benefit from
5	Profession	1	One of the names of Allah (meaning the One who bestows blessings and provisions)
6	Labor		To exert effort in order to bring something forth



FILL IN THE BLANKS

(Profiteering, najash sale, aggression, riba al-nasi'ah, talaqqi al-rukban, grass, wealth, children, gambling, taqwa, intoxicants, fasid condition, haram, fire)

1. "Only Hell fire is befitting to a body that has been nourished by " (Abu Bakr)
2. "O you who believe! Let not your and your divert you from the remembrance of Allah." (Al-Munafiqun, 63: 9)
3. means to hoard goods (especially food items) needed by people, keep them in storages, and not to sell them until their price goes up.
4. "And cooperate in righteousness and, but do not cooperate in sin and" (Al-Maidah, 5: 2)
5. "O you who believe! Indeed,, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful." (Al-Maidah, 5: 90).
6. exists in, or results from, a sale transaction which unduly benefits one the counterparties in the form of a surplus or extra amount due to delay of delivery of his side of the transaction.
7. The name of the trade when a person who is not an actual buyer interferes in the trade with the aim of increasing the price is called
8. means that a group of people from the city stop the villagers or people coming from elsewhere on the road in order to take their products which they bring to sell at the city market.
9. The term used for the condition where a greater benefit is secured for either the seller or the buyer is
10. "Muslims are partners regarding three things: "Water, and " (Abu Dawud, Buyu, 60)



**WRITE "PERMISSIBLE" OR "NOT PERMISSIBLE" IN THE SPACES
THAT ARE LEFT BLANK IN THE TABLE**

Selling the meat of a carrion	Not permissible
Selling an automobile with the condition the owner uses it for a month before giving it to the buyer	
Buying the fish swimming in the sea	
Engaging in trade at the time of Friday prayer	
Selling one kg out of a pile of food items	
Selling the water in a bottle	
Selling a camera without telling its brand	



WORD SEARCH: Find the words

E	Z	I	W	O	R	K	G	S	S	L	E
E	I	N	A	J	A	S	H	C	A	B	X
M	L	A	B	O	R	I	Z	Q	L	T	C
P	R	X	J	H	H	I	L	A	E	D	H
L	L	I	V	E	L	I	H	O	O	D	A
O	O	F	N	A	S	I	A	H	G	V	N
Y	B	B	G	H	A	S	B	C	H	B	G
E	C	O	N	S	E	N	T	L	A	R	E
E	X	X	G	G	R	I	B	A	R	I	T
Z	N	B	G	H	A	B	N	R	A	B	Q
E	A	M	D	N	A	F	W	Q	R	E	D
N	A	X	Q	E	M	P	L	O	Y	E	R

RIBA
EXCHANGE
GHARAR
NAJASH
GHABN
HILA
NASIAH
GHASB
BRIBE
EMPLOYEE
EMPLOYER
RIZQ
CONSENT
LABOR
LIVELIHOOD
WORK
SALE



MULTIPLE CHOICE QUESTIONS

1. Which information is correct?
 - A) If Allah Almighty were to bestowed His blessings abundantly upon His servants, His servants would not go astray.
 - B) No one consumes something more virtuous than what comes from the labor of their hand.
 - C) Allah loves those who work for art.
 - D) Even if he is in a condition that he can work, a destitute person is allowed to beg for money.
2. Of the options below, which of them is not a requirement regarding the obtaining of sustenance?
 - A) It should not be forgotten that the provider of sustenance is Allah.
 - B) A job that arouses sexual feelings should not be chosen.
 - C) Care should be shown when choosing a job to earn sustenance.
 - D) Because worship decreases the productivity of work, the acts of worship should not be performed in the place of work.
3. Which one is amongst the rights and responsibilities of the employer?
 - A) To try to carry out the job he has undertaken in a very careful manner.
 - B) To give the worker's pay before his sweat dries up.
 - C) To care for and protect items trusted to his responsibility.
 - D) To carry out the job that is wanted of him in a satisfactory manner.
4. Of the options below, which one cannot be considered as prohibited earning in trade?
 - A) Extortion
 - B) To acquire a high profit
 - C) To take bribe
 - D) To sell a stolen good
5. Interest is one of the major sins in the Religion of Islam. Of the options below, which one cannot be shown as an example of trade that is involved in interest?
 - A) Giving \$1000 as loan and stipulating to pay \$1001 back
 - B) Exchanging one kg high quality date with two kg low quality dates
 - C) Exchanging 5 grams of gold bullion with 5 grams of finished gold ornaments.
 - D) Exchanging two commodities and delivering one of them after the contract.

CHAPTER 5

LAWFUL (HALAL) AND PROHIBITED (HARAM) IN ISLAM

CONTENTS

- A. THE BASIC PRINCIPLES AND LAWS OF ISLAM IN RESPECT TO HALAL AND HARAM
- B. FOODS AND DRINKS THAT ARE HALAL AND HARAM
- C. RULINGS ABOUT HUNTING ANIMALS
- D. RULINGS RELATED TO CLOTHES
- E. RULINGS ABOUT ADORNMENTS AND DECORATION
- F. RULINGS RELATED TO USING FURNITURE AND DECOR OF THE HOME
- G. RULINGS ABOUT ENTERTAINMENT AND LEISURE
- H. OATH AND VOW
- I. UQUBAT (WORLDLY PUNISHMENT AND SANCTIONS)



PREPARATORY WORKS

1. Are laws in Islam related only to worship and good morals? Discuss.
2. Why has Allah prohibited drinking alcohol? Research the effects of alcohol on society.
3. Research about the drawbacks of smoking to the health and about the stance of Islam on this topic.
4. Examine the rules of Islam on hunting animals.
5. Make a research about what the private areas ('awrah) of a man and woman are.
6. What are the limits of physical adornment for men?
7. Is it permissible to display images of live creatures in the home?
8. Research about the effects of gambling on families.
9. How does a believer carry out the atonement of an oath? What kind of oaths require atonement?
10. What are the hadd punishments in Islamic law? Memorize them.

A. THE BASIC PRINCIPLES AND LAWS OF ISLAM IN RESPECT TO HALAL AND HARAM



1- Anything which is not prohibited is Halal: “If there is no ayah or hadith prohibiting a certain thing, then that thing cannot be deemed unlawful (haram). When the Messenger of Allah was asked about fat, cheese, and meat of a donkey, he said, *“That which is halal is what Allah has made halal in His book, and what He has deemed haram is haram, however what he has not mentioned (whether its lawful or unlawful) – this is a mercy for you (you are free regarding them).”*¹ “Allah has declared some things as obligatory upon you. Do not skip them; He also has drawn some limits. Do not violate them. He declared some things as prohibited (haram). Do not commit them. Not because He has forgotten but because of His Mercy for you, He has not said anything about certain things. Do not question them.”²

2- Only Allah has the authority to decide what is halal and what is haram: Allah alone has the authority to declare things to be allowed or prohibited, no human has this authority. Prophets merely convey the restrictions and laws of Allah to human that is their task. Allah says in the Holy Qur’an, **“And do not say about what your tongues assert of untruth about Allah. Indeed those who invent falsehood about Allah will not succeed..”**³ For this reason, Scholars of Islam do not say “haram” about something which has not been prohibited by the texts (Qur’an and Sunnah), they prefer to classify it “makruh” (disliked).

3- There are always lawful alternatives to any haram thing: Islam has not declared haram anything that is vital and necessary for the human being. In fact, things which are completely or mostly harmful are the ones declared haram, e.g. alcohol.

4- Anything that leads to a haram is also haram: The best way to avoid something that is haram is to get rid of the harmful steps that lead to it. This is the stance of Islam. The aim is not to punish the criminal but to prevent the crime. For example; as zina (extra-marital intercourse) is forbidden, so too are the things that lead to it; such as being alone with a person from opposite sex in a place, lustful images and music, etc.

5- Using tricks to make something haram look halal is also haram: Coming up with ways to make something haram look halal does not change its unlawfulness, it is still haram. The Prophet Muhammad (pbuh) had warned us that this will happen: *“One day a group from my ummah will change the name of wine and declare it halal.”*⁴ Likewise, legitimizing inappropriate images with the reasoning that it is merely “art” does not make it lawful.

1 Al-Tirmidhi, Libas 6; Ibn Maja, At’ima 60

2 This hadith was transmitted by al-Daraqutni and al-Nawawi reported that it is an authentic (hasan) hadith.

3 Al-Nahl, 16: 116.

4 Al-Bukhari, Ashriba 6

6- Good intention does not legitimize the unlawful: Using something haram with good intentions to obtain a positive outcome is not allowed. For example, taking part in gambling, theft, or interest in order to build a mosque or charity institution can never be permissible. The following saying of the Prophet Muhammad (pbuh) supports this fact: *“A slave of Allah who acquires haram wealth and gives charity from it, he shall not be rewarded for it and it will not be accepted from him. If he spends from it, he does not gain any blessing from it. If he leaves it behind, it will drag him into the hellfire. Verily Allah does not erase the evil deed with an evil one, he erases evil one with a good deed. Indeed the repulsive does not wipe out the repulsive.”*⁵

7- Avoid that which is suspected to be haram: Islam has clearly defined what is halal and what is haram. There is also the grey area, in other words there are things whose lawfulness we are not certain. Piety, in this case, drives a Muslim to beware of what is haram and what he is suspicious may be haram. The following hadith is like a rule in this matter: *“That which is halal is clear and that which is haram is clear. Between the two of them are ambiguous matters of which many people do not know. He who avoids the suspicious (ambiguous) matters clears himself in regards to his religion and honour, but he who falls into suspicious matters falls into that which is haram, like the shepherd who pastures around a sanctuary, all but grazing therein. Truly every king has a sanctuary, and truly Allah’s sanctuary is His prohibitions”.*⁶ The Prophet (pbuh) also said that, *“Leave that which is ambiguous, take that which is not (in other words which is clearly halal).”*⁷

8- Something which is haram is also haram outside the Muslim abode: A Muslim is not permitted to commit adultery, gambling, theft, or any other haram action no matter wherever he/she is on earth. Haram is haram everywhere.

9- Wasting is prohibited: Throwing away food, clothing, and other items that have not been used or consumed is overindulgence and considered haram.⁸ Likewise, spending money in excess is strongly discouraged in Islam.

10- Necessity temporarily makes haram permissible: Islam, which keeps the circle of unlawful very limited, permit flexibility regarding this circle during the time of necessity. For example, if a person has the risk of dying, and he has no other food or drink, he may eat or drink from something haram just enough to keep himself/herself alive without over-indulgence. “State of necessity” only refers to a setting or moment in which no halal alternative exists.

LET US NOTE

Treatment of diseases by unlawful foods or drinks is not permissible in Islam. *“Allah created the disease and also the cure, and for every disease He has provided a cure. So treat yourselves with medicines, but do not treat yourselves with prohibited things”.*

(Abu Dawud, Janaiz, 3207)

The following verse is repeated where swine, meat of a carrion, and blood are repeated in the four chapters of the Qur’an: **“... But whoever is forced (by necessity), neither desiring it, nor transgressing its limit, there is no sin upon him.”**⁹

If a Muslim nearby owns more food or drink than he needs, he is obliged to feed the Muslim who is in need. If he fails to do so, the needy Muslim may take it from him. The responsibility is of the wealthy person who does not help the needy person.

It is permitted for a Muslim to be diagnosed of his illness or made comfortable with something that is haram (if it is mandatory). For example, although the Prophet prohibited men to wear silk fabric, he permitted some men who had illnesses related to their skin.

5 Ahmad b. Hanbal, Musnad

6 Al-Tirmidhi, Buyu’, I.

7 Al-Bukhari, Zabaih, 2, 9.

8 Al-Isra, 17: 26

9 Al-Baqara, 2: 173; al-Maida, 5: 3; al-An’am, 6: 145; al-Nahl, 16: 115

B. FOODS AND DRINKS THAT ARE HALAL AND HARAM**I. Foods that are declared to be haram**

It is informed in the Holy Qur'an that Meat of carrions, flowing blood, swine flesh, meat of animals slaughtered without the mentioning of Allah's name are unlawful in Islam.¹⁰

Other prohibited animals are as follows:

The meat of mule and donkey are prohibited. Even though it is disliked, the meat of horse is permissible. The meat of predatory animals is prohibited. Cat, dog, wolf, bear, elephant, pig, coyote, lion, tiger, monkey, wildcat, owl, etc. are all prohibited animals. On the other hand, the meat of some animals such as fox and porcupine with weak front teeth with which they cannot tear up their prey are not prohibited to eat.

All predatory birds with strong talons to tear up its preys are prohibited. Eagle, falcon, hawk, vulture can be given as examples for this group. Because Allah's Messenger (pbuh) prohibited to eat animals with talons and fangs.¹¹

Seagull is prohibited according to Hanafi School. However, according to Shafii School seabirds like seagull or heron are permissible to eat. Some other birds, on the other hand, like parrot, peacock, bat, windhover, and dovetail are prohibited.

It is also prohibited to eat the meats of the animals whose harmful effects to human beings are proven such as snake, scorpion, rat, crow, glede, and mad dog.¹²

All pests are forbidden. Ant, fly, insect, snake, turtle, maggot, mosquito, louse, all kinds of bee, scorpion, poisonous and animals with stings are forbidden. Locust, porcupine, and lizard are exempted from this rule and they are lawful to eat.

All marine animals which cannot live on land are all lawful. Allah's Messenger (pbuh) said in regards to sea, *"Its water is pure and its dead is lawful."*¹³ It is prohibited to eat the meat of animals which can live both on land and in water such as frog, crab, and alligator. (According to Hanafi School, all marine animals except the ones in form of a fish are prohibited.)

Because it is not possible to purify the fluids such as oil, molasses, and vinegar which is mixed with impure materials, it is prohibited to consume them. In regards to some butter in which a Mouse fell, Allah's Messenger (pbuh) said as follows, *"When a mouse falls into clarified butter, if it is solid, throw the mouse and what is around it away, but if it is in a liquid state, do not go near it."*¹⁴

All materials which is harmful to human body such as rocks, dirt, iron, glass, heroin, hashish, and poisons are prohibited. It is also prohibited to consume the milk, urine, semen, and blood of the animal the meat of which is prohibited.

II. Intoxicants and Drugs

Intoxicants are drinks that, when a certain amount is consumed, cause intoxication, i.e. drunkenness. Islam does not allow drinking any kind of intoxicant: **"O you who believe, indeed, intoxicants, gambling, worshiping idols and divining arrows are but defilement from the work of Satan, so avoid it that you**

10 Al-Maida, 5: 3; al-An'am, 6: 145.

11 Muslim, Sayd wa Zabaih, 3

12 Al-Bukhari, Bad al-Khalq, 16

13 Al-Tirmidhi, Tahara, 52

14 Abu Dawud, At'ima, 48

may be successful. Satan only wants to cause you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?"¹⁵

Other prohibitions related to intoxicants:

1- Any drink that causes drunkenness is haram: The term “khamr” mentioned in the Qur’an encompasses all kinds of intoxicants, and they are all prohibited. In response to a question, the Prophet Muhammad said, *“Anything that causes drunkenness is an intoxicant (khamr) and all intoxicants are haram.”*¹⁶

2- If drinking a large quantity of something causes intoxication, then a little of it is also haram: As intoxicants may result in addiction and habit over time, drinking a minimal amount presents a high risk of increasing the amount of consumption. The Prophet Muhammad says, *“That of which a lot causes drunkenness, even a small amount of it is not permitted (haram).”*

3- Trading intoxicants is haram: Islam has forbidden the trade of alcohol, even if it is with non-Muslims. The Prophet Muhammad (pbuh) said the following regarding this matter, *“Allah has cursed intoxicants, and whoever drinks it, whoever pours it, whoever sells it, whoever buys it, whoever presses (distills) it for another, whoever presses it for himself, whoever delivers it, whoever accepts its delivery or whoever benefits from its profit.”*¹⁷

4- It is haram to attend an event where alcohol is served: As well as a believer is required to avoid what is unlawful, it is his/her duty to warn others about what is haram. Umar (r.a.) narrates from the Prophet (pbuh): *“He who believes in Allah and the hereafter should never sit at a table that khamr is being served.”*¹⁸

5- Treatment with intoxicating materials is not permitted: Tariq b. Suwayd al-Ju’fi came to the Prophet Muhammad and asked a question about alcohol. The Prophet asserted that it is haram, then Tariq blurted, “But I take it as medicine.” So the Prophet replied, *“It is not a cure, it itself is a disease.”*¹⁹

6- It is haram to take drugs: Drugs such as heroin, cocaine, marijuana, ecstasy are more dangerous and harmful than alcohol and they result in the destruction of who consumes it. Islam has commanded humans to protect their intellect, thus anything that destroys the intellect and conscious thought is haram. For those who will go into surgery, it is permissible to be drugged if it is not possible to perform surgery without it.²⁰

III. Smoking

Things that are poisonous and harmful to human body are prohibited.

There is no clear ruling in the Qur’an or Sunnah regarding smoking, however the majority of Islamic jurists have classified it as reprehensible. On the other hand; as smoking significantly harms the smoker and others around him, and causes wasteful expenditure resulting in using up resources, it is argued whether or not it may be considered haram.

Smoking is not something a pious Muslim would do, it does not fit with righteousness. Allah says in the Qur’an; **“Do not throw yourselves into destruction ...”**²¹, and **“Do not kill yourselves ...”**²²

Smoking “shisha” or “nargile” is similar to smoking tobacco, thus its ruling is the same.

15 Al-Maida, 5: 90-91.

16 Muslim, Ashriba, 73-75

17 Al-Tirmidhi, Buyu 58; Ibn Maja, Ashriba 6

18 Al-Tirmidhi, Adab, 43; Abu Dawud, At’ima 18

19 Muslim, Ashriba, 12

20 Mustafa al-Hin, *al-Fiqh al-Manhaji*, 2/82-83

21 Al-Baqara, 2: 195.

22 Al-Nisa, 4: 29.

C. RULINGS ABOUT HUNTING AND SLAUGHTERING ANIMALS

Hunting is done by preying on and slaughtering land or sea game and birds. Some wild animals that are only caught through hunting are also considered game.

Even though hunting has not something favorable by Islam, it is still permissible with certain conditions:

1- The hunter should intend to make the meat of the game lawful.

2. The hunter must be a skilled one, not amateur. He should know the rules of hunting according to Islamic law. In order to make the meat of a game, the hunter must be Muslim or someone from the people of the Book.

3. Hunting should not be done for fun or entertainment. It should only be done if the hunter acquires livelihood or food from this practice. Pregnant or baby games are not to be targeted. After catching a game, one should not torment the games and kill them by using targets.

4. In order to minimize the pain felt by the slaughtered, a sharp or lethal weapon must be used. Game slaughtered by a knife, sword, arrow, bullet, pellet may be eaten.²³ Killing an animal, however, with a rock or club by beating or crushing it is not allowed whatsoever and this animal may not be eaten²⁴ If a game falls into a trap or net and dies before properly being slaughtered, its meat becomes unlawful to eat. The meat of a game killed by a rifle or buckshot is not lawful, either. (According to Hanafi School, it is permissible to eat the meat of an animal wounded and killed by shotgun.)

5. Hunter dogs, falcons and birds that have been trained to hunt may be used for hunting. The verse "... Lawful for you are all good foods and game (caught by) what you have trained of hunting animals which you train as Allah has taught you. So eat of what they catch for you, and mention the name of Allah upon it, and fear Allah..."²⁵ speaks of this very matter. The trained hunter animals need to be properly trained and must bring the prey to its owner without starting to eat it.



6. Before placing the fishing rod or net in the sea, throwing an arrow or shooting with a gun, the hunter must say the Basmala. According to Shafii School, this is not a condition but recommended. Sacrificing an animal with a name other than Allah is not allowed. Allah Almighty the Qur'an: **"And do not eat of that which the name of Allah has not been mentioned."**²⁶ It is reprehensible to neglect knowingly mentioning the name of Allah. If one neglects mentioning the name of Allah while slaughtering or hunting an animal out of forgetfulness not intentionally, it is permissible to eat the meat of that animal by mentioning the name of Allah before eating.

7. The instrument of hunting should wound the animal and shed its blood. One should know for sure that the game is killed by the hunting instrument. If the game is still alive after wounded by hunting instrument, it should be slaughtered just like the domestic animals.

²³ Al-Maida, 5: 94.

²⁴ Al-Maida, 5: 3.

²⁵ Al-Maida, 5: 4.

²⁶ Al-An'am, 6: 121.

D. LAWFUL AND PROHIBITED RELATED TO CLOTHES

I. Covering the 'awrah

The term 'awrah refers to the parts of the body which must be kept concealed from others with appropriate clothing as displaying them is forbidden. Allah has conveyed the command of covering the 'awrah through all His messengers sent to man. The parts of the body defined as 'awrah are different for men and women, as well as the parts which are meant to be covered in the presence of specified relatives and others.



The 'awrah of men in the presence of other men: It is the part of the body between navel and knee. Abu Said al-Hudri (r.a.) related the following hadith, "*The 'awrah of man between his navel and knee.*"²⁷ According to Shafii School, knee is not included into the 'awrah. According to Maliki School, 'awrah is divided into two types: major (mughallazah) 'awrah and minor (khafif) 'awrah and they regard calf as minor 'awrah.

The 'awrah of women in the presence of other women: It is the part of the body between navel and knee. It is not permissible for an adult woman to uncover her 'awrah or to look at another woman's 'awrah even if she is with her daughter or mother. A woman should not uncover above her waist except in the presence of close female relatives.

The 'awrah of men in the presence of women: If the man is close relative (mahram) of a woman, his 'awrah towards that man is between his navel and knee. In the 31st verse of chapter al-Nur, it has been mentioned the non-marriageable kin (*mahram*) men to whom a Muslim woman may display her charms and beauty (*zinah*).

Her husband (it is permissible for the husband to see his wife's whole body)

Her father, grandfathers, father in law and grandfathers of her husband, maternal and paternal uncles).

Her sons and sons of her husband.

Her brothers, sons of her brothers, and sons of her sisters (i.e. her cousins),

Their women, those whom they rightfully possess, or such male attendants as are beyond all sexual desire, mentally ill and very old men...

Children that are as yet unaware of women's nakedness.

According to Muslim jurists a woman's charms (adornments) "*zinah*" are: her hands, face, head, hair, ears, neck, arms, feet and bottom of her legs. This is so, because she beautifies these parts of her body with jewelry.

According to this, a woman may expose her hands, face, head, hair, neck, arms and feet in front of her non-marriageable kin (*mahram* men).

She may also display her ornaments in the presence of her brother, father, grandfather, uncles, and foster brother (milk sibling) as they are all men who she may never marry. However, if there is any fear of temptation, then it is better for her to cover them. Furthermore, it must be noted that she is allowed to display them, but not obliged to, thus she may cover her ornaments in the presence of her non-marriageable kin and this is better for her.

27 Ahmad b. Hanbal, II, 187

According to Hanafi School, is a woman is not among the close relatives of a man, in other words if he is someone that she can get married, she can look at the man's body except between his navel and knee if she is sure that she does not have lustful feelings. According to Shafii School, it is not permissible for Muslim women to look at marriageable men's body except their face, hands, and feet without a necessity.²⁸ Because in the above-mentioned verse, not only Muslim men but also Muslim women are commanded to lower their gazes.

The 'awrah of women in the presence of men: In the books of Shafii School, there are two views in this regard: According to some scholars, women's whole body including their hands and face are 'awrah in the presence of marriageable men.²⁹ The proof for their view is the practice that Muslim women wore veils throughout Islamic history.³⁰ According to preferred view, however, women's whole body except their hands and face are 'awrah in the presence of marriageable men.³¹ This is also the ruling in Hanafi and Maliki Schools. Women's face and heads are not included in her 'awrah. What is meant by **"they should not display their beauty and ornaments except what (must ordinarily) appear thereof"**³² is the parts of the body on which the ornaments like necklace are worn. Hands and face are exempted from this. When our beloved Prophet (pbuh) saw his sister in law Asma wearing a transparent dress, he turned his face and warned her saying, *"O Asma', when a woman reaches the age of menstruation, it does not suit her that she displays her parts of body except this and this, and he pointed to his face and hands."*³³

It is not permissible for men to look at the face and hands of women that they can marry. In fact, Imam Nawawi said in this regard, "It is forbidden an adult man to look at a woman whom he is legally allowed to marry. In times of fitnah (unrest, sedition), it is also forbidden to look at her hands and face."³⁴ It is expressed in another hadith, *"The woman is 'awrah who needs to be concealed, so when she goes out, the Satan seeks to tempt her."*³⁵

If a woman covers her face with veil, she may show her face when required. A woman who presents herself as a witness in a court must show her face for identification.

The hair, neck, arms and lower parts of the legs of female slaves are not included in their 'awrah. However, if it is time of fitnah or if she is attractive, it is deemed appropriate to conceal their body just as free Muslim women in order to block the means leading to sins.

There is not 'awrah for small children. From the day they start to speak until the age that they become attractive, only their private parts are accepted as 'awrah. The 'awrah limits in prayer and outside prayer for the children at the age of discernment is same as the 'awrah limits of adults.³⁶

Covering the body with transparent clothes is not considered proper cover. Praying with such garments makes the prayer invalid. If the clothing is solid and not transparent, however makes the shape and size of the body parts obvious, the prayer is considered valid, however this form of covering is reprehensible. Because it is impossible to avoid this.

Just like looking at someone's 'awrah is forbidden, touching the 'awrah parts of the body is also forbidden. Muslim jurists (*fuqaha*) see no harm in exposing the 'awrah in times of necessity. For example; when ordered by a doctor, nurse, surgeon, police to examine the 'awrah parts of the body, one may show this area with the condition that he or she does not display more than what is required.

28 Al-Nawawi, al-Majmu', III, 168; al-Shirbini, Mughni al-muhtaj, III, 132

29 Al-Jazari, al-Fiqh ala al-madhahib al-'arbaa, I, 192

30 Al-Shirbini, Mughni al-muhtaj, XII/38

31 Al-Nawawi, al-Majmu', III/167; al-Jazari, al-Fiqh ala al-madhahib al-'arbaa, I/192

32 Al-Nur, 24: 31.

33 Abu Dawud, Libas, 31

34 Al-Nawawi, al-Minhaj / al-Siraj al-Wahhaj, s.360

35 Al-Tirmidhi, Rada, 18

36 Ibn Abidin, Radd al-Mukhtar, I, 378

The *‘awrah* should not be displayed randomly without reason, this is why, a woman must consult a female doctor when she is ill. However if no female doctor exists or is available, she may be diagnosed by a male doctor and she may only show the necessary amount from her *‘awrah* to the doctor with the condition that a male *mahram* is present, because, “the level of the necessity is decided in accordance with its level of intensity.”

II. Matters to be considered when selecting clothing

One should keep in mind the following matters when selecting clothes:

We should keep in mind that disregarding the covering of our body is Satan’s trap: **“O children of Adam, we have bestowed upon you clothing to conceal your private parts and as adornment. But**

the clothing of righteousness that is best. That is from the signs of Allah perhaps they will remember. O children of Adam, let not Satan tempt you as he removed your parents from Paradise, stripping them of their clothing to show them their private parts...”³⁷



Those who go out in public should dress appropriately, **“O children of Adam, wear your adornments to the masjid...”**³⁸

One day a man whose hair and beard were unkempt (messy) came to the Prophet, the Prophet said, *“Is it not better for you to come after having brushed your hair and tidied yourself, rather than with messy and untidy hair like the Satan?”* Again,

the Messenger of Allah saw a man with dirty clothing and said, *“Couldn’t this man find anything to wash his garments with?”*³⁹

Clothing worn for the purpose of showing off or flaunting one’s pride has been prohibited.

Outfits made from animal skin should not be preferred. Islam, which prohibits animal killing for fun, does not allow killing wild animals for their fur or skin. This is why killing wild animals like panther and wearing cloths made from their skin is considered reprehensible.

III. A woman’s outer garment and its characteristics

Islam has commanded women to cover themselves in the presence of *non-mahrams* (men to whom they have no impediments to get married). A woman who leaves her home, must wear a jilbab (outer garment) and khimar (head scarf) in addition to covering her *‘awrah* parts of her body. This is obligatory upon her. The Qur’an mentions in chapter al-Nur (24) verse 31 and chapter al-Ahzab (33) verse 59 that when Muslim women leave their homes, or in the presence of men, they must cover their bodies except for “what is apparent”: pull their covers over their bosoms (chest), wear a single garment from head to toe, hide their adornments and move in a manner that will not expose their hidden ornaments.

When a woman enters the presence of a group of a marriageable (non-mahram) and/ or non-marriageable (*mahram*) men, there are some matters that should be considered. These are:

- a) Her garments must be thick enough not to show what is beneath it (her skin).

³⁷ Al-A’raf, 7: 26-27.

³⁸ Al-A’raf, 7: 31.

³⁹ Abu Dawud, Libas 14; Ahmad b. Hanbal, Musnad, 7/357

b) The garment must not reveal her body shape. Her clothing should not be too tight to expose her body and it should be in a way that it covers from the sides of her body.

c) The clothing must not be attractive or dressy. A Muslim woman should wear her fancy and attractive clothing at home solely for her husband. When in public, amongst other men, she must wear her head cover and outer-garments. However, she is allowed to wear pleasant clothing that does not attract the attention of the opposite gender.

Allah's Messenger (pbuh) said, *"There are three people with whom Allah would not speak to or ask questions on the Day of Judgment, he will send them to eternal torment. A Muslim who rebels to a pious leader and dies as a rebel, a servant who rebels to his master and dies that way, a woman who leaves her husband and is seduced by worldly desires and adornments. These three people will be punished with no questions asked."*⁴⁰

INFORMATION BOX

A Muslim must be clean and tidy in his clothing: Allah's Messenger (pbuh) said, "Indeed Allah loves to see his slaves wearing the His blessings (i.e. good clothing)." (Tirmidhi, Adab, 54)

A woman should not wear anything tight that reveals the shape of her body parts. Uthama b. Zaid narrated, "One day Allah's Messenger gifted me a tight fitted dress called *"qutbi"*. I took the dress and gave it to my wife. When Allah's Messenger asked why I did wear it, I told him that I gave it to my wife. He then said, *"Go and tell her to wear a shirt under it. I fear that her body will become apparent [in the dress]."*⁴¹

A proper garment must be thick enough not to show the skin underneath it.

Islam has given women certain obligations and responsibilities, and at the same time has granted her ease. During menstruation period after childbirth, she is exempted from prayer, fasting, and obligations during hajj. Women in Islam are not obliged to perform Friday Prayer, Eid Prayer, Funeral Prayer and she does not have to take part in Jihad or perform prayers in congregation, she is recommended to pray in her home. Both genders are different in their own ways, thus Allah has asked the woman to cover more for the peace and well-being of society.

IV. A woman must be decent and dignified while walking and talking

A woman must be reserved and sensible whilst in public. To amble or walk coquettishly does not fit with the decency of a Muslim woman. Allah says in the Qur'an, **"And let them not stamp their feet to make known what they conceal of their adornment."**⁴²

When she is needed to talk with a male, she must do so in a respectable and modest manner. Women are recommended to occupy themselves with house chores and responsibilities of the home instead of spending long hours outside of the home.

40 Hakim, al-Mustadrak, 1, 119; Ahmad b. Hanbal, Musnad, 6/19

41 Al-Maqdisi, Mukhtar, 1, 441

42 Al-Nur, 24: 31.

Women are allowed to talk to men, ask questions, and make transactions with them when it is needed. We know that the wives of the companions would speak to men when needed and buy things from them. Allah's Messenger told his wife Sawda, *"Allah has allowed you (all) to go out (of the home) to obtain your needs."*⁴³ In another hadith, he commanded, *"Do not prevent women from entering the Allah's mosques."*⁴⁴ And thus, he allowed women to go out of their homes for legitimate purposes such as buying necessities, performing acts of worship, pursuing education, and attending social activities like marriage ceremonies etc.



LET US EVALUATE

Islam has established certain limits and principles in relations between men and women. In which ones of these rulings and principles does one have difficulty to follow in society? Discuss and evaluate in class.

When speaking to a man who is not of kin, a Muslim woman must be reserved and talk as much as it is necessary. The following verse will shed some more light: **"Do not be soft in speech [to men], lest he in whose heart is disease should covet, but speak with appropriate speech."**⁴⁵ This verse conveys to all Muslim women that they must speak to men with a sedate and collected manner, and speak only what is necessary.

It is a hadith of the Prophet (pbuh) for a Muslim men to say the Islamic greeting (Salam) to other Muslim men, and Muslim women to other Muslim women when they meet. However, for a man and woman who are not related or neighbors, it is not appropriate for them to greet each other if they are alone.

V. Looking at the Opposite Gender

It is haram for a Muslim to look at another person's 'awrah or attempt to see it. A Muslim may look with lust only to his or her spouse.

It is haram for a Muslim, especially the young, to look at the opposite gender with lust. Islam does not blame a man or woman for the first seeing. Allah's Messenger (pbuh) said to Ali (r.a.), *"O Ali! Do look back for the second time, the first seeing has no harm but you are responsible for the second."*⁴⁶

Men and women must control their gazes. This is expressed in the following verse from the Holy Qur'an: **"Tell the believing men to lower their gaze and be modest..."**⁴⁷ **"And tell the believing women to lower their gaze and be modest..."**⁴⁸

A Muslim man may look at the hands and face of the woman he intends to marry. Allah's Messenger (pbuh) advised men who wish to get married to look at the girl whom they interested in, and he adds: *"This is better for your happiness and agreement."*⁴⁹

43 Al-Bukhari, Nikah, 115

44 Muslim, Salat, 136

45 Al-Ahzab, 33: 32.

46 Muslim, Adab 45; Abu Dawud, Nikah, 43

47 Al-Nur, 24: 30.

48 Al-Nur, 24: 31.

49 Al-Nasai, Nikah, 17

VI. Shaking Hands with the opposite gender

Shaking hands with the opposite gender is not an appropriate act in Islam, since Islam aims to protect the required distance between man and woman. Young men and women, no matter how certain they may be that there will be no attraction between them, are not allowed to physically mingle.

When the verse about the principles of pledging allegiance for women was revealed to, the Prophet, he collected all the Muslim women in Medina and asked for their pledge. 'Aisha (r.anha) describes this event as follows: *"To each and every believing woman who accepted the conditions of the verse, the Prophet said, "I have made a pledge with you", I swear by Allah, during the pledge he did not touch the hands of anywomen."*⁵⁰

If there is no fear of mischief, an old woman's hand may be kissed as a respectful gesture. Thus, it has been noted that Abu Bakr (r.a.) would greet old women. Likewise it was reported that while Abdullah b. Zubair (r.a.) was ill in his home, he hired an old woman as his care-giver.



VII. Separating Beds

When the male and female children reach the age of ten, their rooms should be separated. If this is impossible due to financial restricts, the children may be sent to dorms to get educated. They should not be allowed to sleep in the same places. Allah's Messenger said in respect to this matter, *"When your children are ten years of age, make them sleep in separate beds."*⁵¹

If children are younger than seven years old, they may share beds with other family members. However once they reach seven years of age, it is absolutely prohibited for a male and female child to sleep in the same bed.

After ten years of age, the prohibition of sleeping in the same bed also consists of the same genders. This separation has some wisdom and benefit behind it. Abu Said al-Hudri narrated from Allah's Messenger, *"Let not a man look at the 'awrah of another man! And the woman should not look at the 'awrah of another woman! Let not a male sleep with another male under the same cover! Likewise let not a female sleep with another female under the same cover!"*⁵²

VIII. The meeting of a man and woman in seclusion

Men and women who are not of kin and young men and women are not allowed to be alone in any secluded place. Such an environment may trigger temptation and bring about rumors. If men and women must sit together in the same room due to necessity, it must be done appropriately.

A woman should try to avoid being alone with a man in an isolated place. The Prophet Muhammad said, *"Beware of being alone with a woman (non-mahram)"* When the companions asked "O Allah's Messenger, what about the brother in law?" He replied, *"The brother of the husband is death."*⁵³ In another hadith he has asserted, *"Whoever believes in Allah and the Last Day, let him not sit with a woman [who has*

50 Al-Bukhari, Ahkam 49; shurut, 1

51 Sunan al-Daraqutni, 1: 230

52 Ahmad b. Hanbal, al-Musnad, 372/1242

53 Al-Tirmidhi, Rada, 16; Ahmad b. Hanbal, IV, 149, 153

*no mahram with her], as the third company will be the Satan.*⁵⁴ At the end of the same hadith, Our Prophet advises women not to travel alone without a close male relative by her side.

Coming together with men should only take place due to necessity. A man and woman who work together and meet often should beware not to be alone in seclusion and should act sensibly when they meet. The ideal way to stay in the same place is with the presence of a close male relative (*mahram*) or a group of people.

E. RULINGS ABOUT ADORNMENTS AND DECORATION

Islam has allowed decoration and adornment - with certain limits - that highlight the natural beauties of human beings bestowed them by Allah Almighty. However, Islam regards the adornments and modifications that alter the natural form and creation as satanic. This is because Satan said, “... **and I will command them to change the creation of Allah.**”⁵⁵

I. Adornments Prohibited to Men

In Islam, men are not allowed to wear silk as it is considered feminine. “The Prophet has not allowed men to wear silk. However if a dress has approximately an amount of silk equal to two, three or four fingers wide, there is no harm in it.”⁵⁶

The Prophet (pbuh) said, “*Do not dress in silk garments for he who wears silk in this world will not be able to wear it in the hereafter.*”⁵⁷

A man is not allowed to wear gold jewelry in Islam. Abu Musa al-Ash'ari (r.a.) narrates from Allah's Messenger (pbuh), “*Wearing silk and gold is haram for Muslim men and halal for Muslim women...*”⁵⁸ Ali (r.a.) explains that Allah's Messenger was holding silk in his right hand and gold in his left, and affirmed: “*Indeed these two have been made unlawful for the men of my ummah...*”⁵⁹

According to a report from Ibn Umar (r.a.), he said that, “Allah's Messenger bought and wore a gold ring. Everyone who saw it bought one too and began to wear it. Upon seeing this Allah's Messenger said, “*I used to wear this ring, but from now on I will never wear it*” and he removed the ring from his finger. His companions did the same.⁶⁰ Ali (r.a.) stated, “The prophet has prohibited the wearing of gold rings, using pillows with gold embellishments, wearing silk and drinking wine.”⁶¹



54 Al-Bukhari, Nikah, 111; Ahmad b. Hanbal, 1, 222; 3, 339

55 Al-Nisa, 4: 119.

56 Al-Nasai, Ziyna, 84; Muslim, Libas, 2

57 Al-Bukhari, Libas, 25

58 Al-Tirmidhi, Libas, 1

59 Abu Dawud, Libas, 11

60 Muslim, Libas, 3; Abu Dawud, Hatam, 3

61 Abu Dawud, Libas, 11; Muslim, Libas, 2

In order to act in accordance with Sunnah, the ring needs to be worn to little finger. It is expressed in a saying of our beloved Prophet (pbuh), *“Allah’s Messenger (pbuh), forbade wearing silk clothes, using pillows as means of pride and boast and putting the ring on middle and index fingers.”*⁶²

Wearing outfits that represent non-believers and their faith has been prohibited. This is why, according to some scholars, it is reprehensible to wear clothing dyed red and yellow with saffron.⁶³

II. Tattoos, Filing Teeth, Plucking Eyebrows and Cosmetic Surgery

It is known that tattoos which are done by the injection of ink into the skin and altering the form of the crowns of the teeth by force are both painful and may harm the health. It is also not permissible in Islam. According to a narration related by Abdullah (r.a.) *“Allah’s Messenger cursed those who get tattoos done, and who does it on the others. Those who pluck their eyebrows and those who file their teeth to make them thinner or widen the gap between the teeth.”*⁶⁴

Tattoo is not an obstacle for major ablution (ghusl). However, Imam Nawawi is of the opinion that tattoo should be removed from the body unless removing it will be harmful to health. Even if the tattoo cannot be removed due to its health hazards or because removing them leaves ugly scars, one may purify himself / herself from its sin by feeling remorse and repenting it.⁶⁵

Altering or modifying teeth that are healthy and normal for aesthetic purposes is not permissible. Abu Rayhana (r.a.) narrates, *“Allah’s Messenger (pbuh) prohibited making the teeth thinner to beautify them, getting tattoos and plucking the eyebrows to make them more attractive.”*⁶⁶ Replacing a bad tooth with a new one or filling it is permitted, and they are not an obstacle for minor or major ablution.

Modifying the eyebrows is done by plucking the eyebrows and making it thinner or more shaped. This is a form of altering the creation of Allah. However, according to some Scholars of Islam (such as Imam Nawawi), it is permissible for a woman to remove facial hair and apply light makeup with her husband’s permission.

Cosmetic surgery that includes the altering of the nose, chin, breasts and other parts of the body generally requires a large sum of money. Spending so much money for such a thing is not acceptable. However, if a person is constantly repressed and mocked due to an abnormality in his or her appearance, it is permitted to undertake a surgery for this matter. The Prophet (pbuh) cursed the person who widens the gap between his/her teeth for beautification purposes.⁶⁷ Here the limitation of prohibition with the phrase “for beautification purposes” excludes the situations of necessity or health reasons.

III. Wearing wigs

Islam does not consider wearing wigs acceptable as it alters the natural appearance and misleads others.

The Prophet had prohibited and condemned those who wear wigs with or without a reason.⁶⁸ Ibn Umar (r.a.) narrates, *“Allah’s Messenger said, ‘May Allah curse and withhold his mercy from the maker and wearer of wigs, the maker of tattoos and who is tattooed.’”*⁶⁹ Likewise Asma bnt. Abu Bakr narrated that *“Allah’s Messenger cursed the wearer and maker of wigs.”*⁷⁰

62 Al-Nasai, Ziyna, 80

63 Al-Nawawi, al-Majmu’, 4/321

64 Al-Bukhari, Libas, 83; Muslim, Libas: 33

65 Al-Nawawi, Sharhu Muslim, XIV, 106

66 Al-Bukhari, Libas, 87; Muslim, Libas, 33

67 Al-Bukhari, Libas, 82, 84; Muslim, Libas, 120

68 Al-Bukhari, Libas, 83, 85; Muslim, Libas, 115, 117, 119

69 Abu Dawud, Tarajjul, 5; al-Nasai, Ziyna, 22

70 Abu Dawud, Tarajjul, 5; al-Tirmidhi, Adab, 32

The issue of hair transplanting for those who experience hair loss is controversial and its permissibility has been much debated.

IV. Applying Kohl and Perfume

According to Ibn Abbas (r.a.), Allah's Messenger said, "Apply kohl with *ismid* (a type of stone) for it benefits the eyes and nourishes the eyelashes." Ibn Abbas has expressed that the Prophet has an eyeliner jar and would apply this eyeliner thrice to both eyes every night.⁷¹

A woman should not put on perfume that sparks temptation when leaving home. She may put perfume while with family members or other women, not in the presence of other men.

During ihram, one of the things to be avoided is perfume. Muslim scholars have unanimously agreed that whether it be major or minor pilgrimage, one who enters the state of ihram should not apply perfume.

V. Dyeing the Hair and Beard

During the time of Prophet Muhammad, the elderly Jews and Christians would not dye their white hair or beards, so the elderly companions were encouraged to dye their white hair and beards.⁷²

Islam allows dyeing hair. However, dyeing the hair black is debated. Women have been permitted to dye their hair black. According to Abu Hurayra (r.a.), Allah's Messenger said, "*Dye your white hair and beard with henna, do not leave it white like the Jews.*"⁷³

Dyeing the hair with a mixture of red, red-black henna and natural dyes has been unanimously regarded as permissible by Muslim scholars. Allah's Messenger (pbuh) said, "*The best things with which grey hair are changed are henna and katam.*"⁷⁴ Allah's Messenger encouraged dyeing hair by henna and katam mixture for the purpose of being different from the infidels and it was perceived as a recommendation rather than command, thus companions such as Abu Bakr and Umar dyed their hair, but others such as Ali, Ubayy and Anas did not.

VI. Rules regarding haircut and styling

Ibn Umar (r.a.) narrates that Allah's Messenger (pbuh) saw a child whose hair was shaved on one side and longer on the other side, so he condemned this haircut style and prohibited it, "*Either shave the whole head or leave all of it.*"⁷⁵ According to Ibn Umar, "Allah's Messenger prohibited the unequal shaving of the hair."⁷⁶

Ali (r.a.) narrates from Allah's Messenger (pbuh): "*It is unlawful for a woman to shave her hair like a man's.*"⁷⁷



71 Al-Nasai, Ziyna, 28

72 Al-Bukhari, Anbiya, 50; Libas, 67; Muslim, Libas, 80

73 Al-Nasai, Ziyna, 65; Abu Dawud, Tarajjul, 18

74 Abu Dawud, Tarajjul, 18; al-Tirmidhi, Libas, 20

75 Al-Bukhari, Libas, 72; Ibn Maja, Libas, 38

76 Al-Bukhari, Libas, 72; Ibn Maja, Libas, 38

77 Al-Tirmidhi, Hac, 75; Abu Dawud, Menasik, 79

VII. Grooming and Growing the Beard

Growing the beard is a Sunnah of the Prophet (pbuh). Under normal circumstances, all Muslim men should grow a beard, known as Muslim style, equal in length on all sides. Allah's Messenger said, *"Do not look like the polytheists, grow your beards and shorten your mustaches."*⁷⁸ Thus, majority of scholars have propounded that under normal circumstances, it is not allowed for a Muslim man to shave his beard based on the above-mentioned hadiths and practice in Muslim society. Many Shafii scholars such as Imam Râfii and Nawawi, however, are of the opinion that shaving beard is reprehensible.

The beard may be groomed or shortened. Imam Malik said, "[A man] should grow his beard as long as other Muslim men grow it, he should shave the excess, it is recommended to do so. Not cutting the excess would make him look messy. There is no limit to shortening the beard. It is best to shorten it until it looks presentable and tidy"

VIII. Imitating the Opposite Gender

A man or woman should not be imitating the opposite gender, whether it be wearing clothing of the opposite gender or any other form of imitation. Both genders are unique in their own ways and have appropriate clothing for their needs and characteristics. Imitating the opposite gender is indeed an act of evil, and those who do are considered to be deviant from the straight path.

The Prophet cursed the male who imitates the clothing or actions of a female and likewise the female who imitates the male in this manner. The following hadith will further explain, *"Allah has cursed the women who imitate men and the men who imitate women."*⁷⁹

Abdullah b. Abbas stated in this regard, *"The prophet has cursed those women who imitate men and the men who imitate women and he ordered their abandonment."*⁸⁰

Abdullah b. Umar (r. anhumâ) narrated from the Prophet, *"There are three types of people who will not enter the Paradise and Allah will withhold His mercy from them on Judgment Day. One who is not obedient to his parents, the woman who imitates men and the husband who is not protective of his wife."*⁸¹

F. RULINGS RELATED TO USING FURNITURE AND DECOR OF THE HOME

Every living creature has a habitat, the humans habitat is his or her home. The Prophet (pbuh) said, *"Four things bring happiness, A good spouse, a spacious home, good neighbors and a comfortable ride."*⁸² Furthermore, Allah Almighty says in the Qur'an, **"Say: Who has forbidden the adornment of Allah which He has produced for His servants and the lawful things of provision"**⁸³ referring to adornments of the home such as flowers, embellishments and decorations.

When Allah's Messenger said, *"One who has an atom's weight of pride in his heart shall not enter Paradise."* When a man asked "But what about one who loves to wear adorned clothing and slippers." Allah's Messenger said to him: *"Indeed Allah is beautiful and he loves that which is beautiful."*⁸⁴ It should be noted that these permissions and encouragements are not absolute but rather have been subject to certain conditions:

78 Al-Bukhari, Libas 63-34

79 Al-Bukhari, Libas, 61

80 Al-Bukhari, Libas, 62

81 Ahmad b. Hanbal, II, 134

82 Al-Tirmidhi, Adab, 41

83 Al-A'raf, 7: 32.

84 Muslim, Iman 147

I. Gold and Silver containers and Silk Cloths

Hudhayfa, a Companion of the Prophet, said that: “Allah’s Messenger disallowed us to eat and drink from gold or silver plates, wear silk garments or use silk cloths to sit on and said, *“Do not drink in gold and silver vessels, and do not wear brocade or silk, for these are meant for them (the non-believers) in this world, but they are meant for you in the Hereafter on the Day, of Resurrection.”*⁸⁵ It is forbidden to hang silk curtain over doors or Windows, use gold plates, cups, (for Muslim men) wear watches and using pen or decorations, or wearing jewelry made from gold or silver. Because the poor and needy may be hurt by seeing the rich boasting by having such things. It is also harmful and have negative impacts on the economy to withdraw gold or silver from the market in order to use it at home for decoration will.

II. Statues

*“The angels do not stay in a home in which there are statues.”*⁸⁶ *“On Judgment Day, those who sculpt such things will have the worse torment.”*⁸⁷ These and other sayings of the Prophet (pbuh) make it clear that a Muslim should not keep statues in his home or take part in making them. The following are some reasons why statues are not allowed in Islam:

- a) Statues and idols have been regarded as idols throughout history, and people worshiped them. Islam aims to enforce the faith in tawhid (Oneness of Allah) through banning idols in the home.
- b) Carving and sculpting idols may make the artist feel as though he has Creator-like features, comparing himself to God.
- c) Preventing the sculpting of symbols or images that do not fit with Islam
- d) Avoiding unnecessary extravagance and wasteful expenditure.

Toys, dolls and toy animals are excluded from this category. Nevertheless, ‘Aisha had toys of this type and was playing with them while still a child, hence Allah’s Messenger did not ban her from them.⁸⁸

III. Images

At the beginning of Islam, until faith in One God had been properly established, the Prophet was strict on the drawing of images and pictures, however afterwards he was more lenient, with certain conditions. Islam has brought with it certain rulings regarding the art of making images and using them:

It is prohibited to draw images of things that are worshiped and holy.

It is haram to draw naked people and things that are disrespectful to Islam.

Drawing things other than live creatures is allowed. In fact, Ibn Abbas (r. anhumā) told an artist about the prohibition of drawing and narrated the following hadith, *“Whosoever makes a picture, will be punished on the Day of Resurrection, and will be asked to infuse soul therein, which he will not be able to do”*⁸⁹ Ibn Abbas then continued, “if you insist on drawing, draw the pictures of trees and the picture of things which do not have souls.”

There are several sayings of our Prophet (pbuh) related to drawing pictures. Some of those hadiths express our Prophet’s disapproval of images of the animals and living beings, while others show us that he did not disapprove of them when they are present in the fabric of such items as cushions and rugs as these things have no manifestation of respect.

85 Muslim, Libas wa Ziyana, 2; al-Bukhari, Ashriba, 28

86 Al-Bukhari, Bad’ al-khalq 7

87 Al-Bukhari, Adab 75

88 Muslim, Adab 54

89 Al-Bukhari, Libas, 89

IV. Photographs

Scholars of Islam have allowed the taking of photographs for the purpose of official matters such as passports, identity cards, government affairs etc.

Taking and using photographs of people, animals and nature is allowed, however the purpose and use of the photograph is taken into account.

Photography and painting can be performed as a profession as long as one observes the above mentioned limits and do not draw and take the pictures of unlawful things. This principle should always be kept in mind. Pictures and drawings that are ethically and religiously against Islamic belief are within the scope of prohibition. Pictures and drawings made for the purpose of worship and vulgarity are strictly prohibited.

V. Pet Dogs

Dog is impure and having dogs in homes hosts many harms. Allah's Messenger (pbuh) said in this regard, *"The angels do not enter a house which contains a picture, a dog, or a man who is impure by sexual defilement."*⁹⁰

Having pet dogs without a necessity is forbidden. In fact, Allah's Messenger (pbuh) said as follows, *"Whoever keeps a (pet) dog which is neither a watch dog nor a hunting dog, will get a daily deduction of two Qirat from his good deeds."*⁹¹

It is important to note that Islam encourages and commands kindness to animals and Allah rewards those who feed and help them. Allah's Messenger has informed us of the sinful man who was forgiven and granted with Paradise for giving water to a thirsty dog.⁹²

G. RULINGS ABOUT ENTERTAINMENT AND LEISURE

Islam is a way of life that is suitable to human nature and needs. Relaxation and having a good time are things that every human needs. The only creatures who devote their whole existence to worship are the angels.

Just as the human stomach yearns for food and drink, the eyes yearn to look at pleasant things and the ears yearn to hear pleasant sounds. Just as food is necessary for the body, it is impossible to prevent all things that the body desires. Thus, Islam has allowed entertainment and leisure that do not cross the boundaries of what is lawful. The goal of Islam is to educate and control the self by avoiding what is haram.

I. Music

Music (sama') is the art of combining vocal and instrumental sounds to produce harmony and an expression of emotion.

Music, when not used for haram purposes, is permissible. However, with regards to the person who performs it, the music which is performed, the instruments played, the setting and audience, the ruling may differ. It may be prohibited, reprehensible, permissible or recommended based on the situation.

90 Abu Dawud, Libas, 129; al-Nasai, Tahara, 167

91 Al-Bukhari, Zabaih, 6; Muslim, hadith no: 1575

92 Al-Bukhari, Shurb, 9

Performing Music as a profession:

Performing music as an occupation is considered reprehensible. Musical gatherings have not been recommended since the beginning of Islam. In the ahadith, some musical instruments and musical performers have been criticized. However, these ahadith are accepted as weak according to Muslim scholars.



Scholars of Islam agree that the musical instruments which are generally used in gatherings serving wine and intoxicants, are not permitted, however other instruments played for relaxation, therapy purposes such as the reed, drum, tambourine are allowed. The big drum used in war and the tambourine played at weddings are allowed according to Muslim jurists.

According to credible sources, our Prophet (pbuh) allowed and even encouraged the use of musical instruments at occasions such as weddings, festivals and welcoming. Furthermore, there is no sahih (authentic) hadith that points out the unlawfulness of music.

Music that one listens to for relaxation is not harmful. Imam Abu Yusuf was asked: "What's your opinion about a woman or child playing the tambourine at home?" He replied, "There is no harm in it. However, if it arouses frivolous dancing and excitement, I would say it is reprehensible."

Singing:

Usually songs consist of lyrics which do not provide any beneficial advice to the listeners. On the contrary, they contain lyrics against Islamic belief such as rebellion against belief in fate and destiny. This is why singing without musical instruments is accepted as reprehensible. If the singer observes the Islamic beliefs in his songs and behaviors, singing is accepted within the scope of permissible. Imam al-Ghazzali said, "Musical instruments to announce marriage ceremony such as tambourine, drum, pipe, and zurna can be used only if they do not lead to entertainment leading to unlawful (lahviyyat)."⁹³

One can listen to music while driving at night in order to keep his attention focused. There are sayings of our Prophet (pbuh) recorded in the hadith books about the permissibility of singing during a journey.

When choosing the appropriate lyrics for a song, provoking and encouraging the listeners to lust and other evil is not allowed. Music that arouses a desire to dance has been criticized in the hadith.

If the music is being performed at a place that contains wine and alcohol, it is haram to perform in such an environment and being present in this place is not advised.

Listening to Songs:

Listening to music (depending on the type) may be haram (unlawful), makruh (disliked), mubah (permissible) or mustahab (recommended).

1) If the clothes worn by the singer, voice, lyrics or music spark desire or lust in the listener, it is haram, especially listening to female singers. It is prohibited for youth who are more apt to be affected by such music to listen to provocative songs.

2) Listening to music instead of worship is makruh. This is why it is disliked to dedicate hours and hours to music.

⁹³ Al-Ghazzali, Ihyau 'Ulum al-Din, vol. II, p. 266 ff.

3) Music that relaxes the mind and nerves is permissible. Thus, it is fine to listen to songs which do not seduce the listeners to the singer's voice.

4) Listening to music that inculcates the love of God and the Prophet, one's homeland, animals, kindness and reminds us of the destitute and poor, our efforts in war and heroic defense of our country is mustahab, as these things have positive impacts on our thoughts. Likewise, a person who ponders on the love of Allah and His magnificent creation through the music he or she listens to, it is mustahab for this person to listen to music.⁹⁴

II. Television and Cinema

Cinema and television are means of transferring news, information and entertainment to us. We cannot say that they are completely haram, it is important to judge it according to what is being screened.

When we take a look at the cinema and television, we are able to notice that most advertisements, films and programs are not very decent, thus it is not advised to watch such things. To avoid coming across inappropriate and immoral viewings, we should avoid the channels that broadcast such things.

It is a Muslim's task to use the television for viewing the educational and beneficial programs, and to avoid what is indecent.



III. Joking

Jokes, witty remarks and humor are things that entertain people. Our Beloved Prophet displayed his sense of humor at appropriate times.

An old woman came to the Prophet and said "Pray to Allah that I enter Paradise." The Prophet (pbuh) replied to her, "O Mother, old women shall not enter Paradise." The woman was shocked and saddened that she will not be able to enter Paradise. Having seen her sudden grief, the Prophet explained, "The old woman will not be old in Paradise, Allah will create her for a second time as a young virgin" and he added the following verse from the Qur'an: **"Indeed, we have produced the women of Paradise in a [new] creation, And made them virgins ..."**⁹⁵

One who intends to make a joke should not insult, or make fun of anybody and he should not disregard the virtue or honor of anybody. One should not lie for the purpose of making others laugh.⁹⁶ *"Woe on he who lies to make others laugh!"*⁹⁷

IV. Sports Competitions

Running: Running is a sportive activity which has many benefits, and when it is done for competition, it is entertaining for the athlete and the audience. The Companions would take part in running races. It is said that Ali (r.a.) was a fast runner. The Prophet and his wife 'Aisha would continuously race each other. 'Aisha would be first, but when she gained weight the Prophet would come first. This story was explained by 'Aisha.

94 Al-Ghazzali, Ihya' 'Ulum al-Din, vol. II, p. 302

95 Al-Waqi'a, 56: 38.

96 Al-Hujurat, 49: 11.

97 Al-Tirmidhi, Zuhd 10

In like manner, sports such as football, basketball, tennis and others are permissible, however, the players should be dressed in Islamically acceptable clothing.

Shooting: The Prophet has encouraged shooting as a sport as it develops skills that are needed in war, and it is a worthwhile activity during free time. When the Prophet met people practicing to shoot (arrows) he would encourage them by saying “*Come on, shoot, I’m with you.*”⁹⁸ The only limit to this sport is shooting live targets such as animals, this is not allowed.

Animal fighting: Making animals like water buffaloes, rooster, bull, goose etc. fight and sometimes kill each other for entertainment was banned by the Prophet (pbuh).

Fencing and Javelin: Javelin and fencing with cultural dances has been a practice since early times. One time Umar (r.a.) wanted to ban it however the Prophet stopped him and said “Leave them Umar, let them play.”

The Prophet (pbuh) himself offered his wife ‘Aisha to watch this event, and she sat in a secluded part of the masjid to watch this show as it took place in the masjid. Allah’s Messenger said, “*Come on Ethiopians! Show us what you have!*”⁹⁹ and also “*try to understand young girls who are interested in entertainment (fun), appreciatethem.*”¹⁰⁰

Wrestling: Wrestling is a sport that the Prophet has approved and even encouraged. The Prophet had wrestled the great wrestler of his time Rukana, and defeated him.

Horse-riding and swimming: The hadith “*Every action far from the remembrance of Allah is amusement and idleness, except for three things: racing between two targets (shooting), a husband playing with his wife and swimming,*” encourages horse-riding and shooting. In another hadith, the Prophet said, “*Teach your children how to swim, shoot and teach your women to spin thread.*” Caliph Umar, in his letter to the people of Damascus said, “*Teach your children how to swim, shoot and ride a horse.*”¹⁰¹ It has been narrated that the Prophet would conduct horse-riding races and reward the winner.

Backgammon: “*He who plays backgammon, it is as if he has dipped his hand in the flesh and blood of a pig.*”¹⁰² “*He who plays backgammon has not obeyed Allah and His Messenger.*”¹⁰³ Scholars who have examined the above hadiths have accepted that playing backgammon is forbidden. The general view in regards to games played with dice and based on chance is same. Some Muslim scholars consider playing backgammon permissible without any bat no matter how small it is like for a cup of coffee. Card games are like backgammon. They are only permissible if they do not involve gambling or cause addiction.

Chess: Chess emerged and became an issue of discussion after the death of the Prophet during the time of the companions. There is no clear evidence that prohibits chess. According to Imam Shafii, chess is permissible because it is a game beneficial to intelligence and helps to develop defense strategies against the enemy. However, just like other permissible games, in order to be permissible it needs to be played with the following conditions:

- a) One should not become addicted to it and miss prayers,
- b) It should not become an instrument for gambling,
- c) Players should refrain from cursing each other or bad-mouthing while playing.¹⁰⁴

98 Al-Bukhari, Jihad 78; Manakib, 4

99 Muslim, Iydayn, 17, 21

100 Al-Bukhari, Nikah, 82

101 Al-Bayhaqi, Shu’ab al-iman

102 Ibn Maja, Adab, 43

103 Abu Dawud, Adab, 56

104 Al-Nawawi, Fatawa, p. 261

Rewarding Winners: Awards or medals given to winners by a third party or organization are permitted. Competitors cannot play a game with the deal of paying money or something valuable if they are defeated. However, it is allowed when both competitors make a deal whereby one of them says “If you defeat me, I will pay you this much, however if I defeat you, you do not need to give me anything;’ There is no harm in such an agreement.

Likewise, when it comes to academic competitions or debates, if one person says, “If you are right, I will give you this much money, and if I’m right, I don’t want anything;’ there is no harm in such a deal. If the other person is successful, he may take the sum of money that has been promised to him. However, if either side is obliged to give a certain amount of money in the case of his defeat, this is considered gambling and is haram.

Games of chance that lead the person to laziness, imagination, and tempt to luxury life are not permissible. If payment or financial compensation like buying a ticket is required in order to become a participant in a competition, not only participation but also winning rewards from such competition becomes unlawful. The same ruling is applicable to selling games played online and using the money acquired from this.

V. Gambling

Islam has banned gambling as it is harmful and destructive to society. When a game is played by money with the illusive promise that they may win something without having to earn it, yet they carry the chance of losing money, this is gambling. The verse in the Qur’an which prohibits gambling:

The verse **“O you who believe! Indeed, toxicants, gambling, stone alters and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful. Satan only wants to cause animosity and hatred between you through intoxicants and gambling to avert you from the remembrance of Allah and from prayer”**¹⁰⁵ enumerates the reasons for this prohibition as,

a) Gambling involves losing or winning based on chance, without putting in any effort. Taking somebody else’s money in such a way, even if they give consent, is haram. It can only be taken through lawful exchange.

b) Although the loser may seem fine with the outcome, there is no doubt that he develops hatred and enmity towards the winner.

c) Gambling results in addiction as the loser plays again in hope of winning the next game to regain his loss and the winner plays again due to his greed for more money. Thus, time and money is wasted and Islamic obligations such as prayer are neglected.

d) The impacts of gambling will not only affect the individual, in fact, it is a danger to society. It makes the gamblers non-productive useless people who do not contribute to the development of society. A Muslim does not base his earnings on a chance game, but he works and exerts effort to earn his living in a lawful manner.

Lottery, raffling, games based on luck, sport betting (e.g. horse racing) and online gambling are all unlawful. Online gambling where money is earned or lost is not any different from ordinary gambling. Spending money on a chance game rather than donating to the poor is indeed no act of virtue. Additionally, organizing gambling competitions by which all earnings will go to charity is not acceptable.

The ruling of Drawing of Lots: Drawing lots is a permissible method when a decision is to be made and no other selection method exists. Muslims may draw lots in order to do a good deed or to decide the order of using a right. Drawing lots in such situations prevents breaking the hearts of other people.

¹⁰⁵ Al-Maida, 5: 90-91.

Drawing lots has been mentioned in the Qur'an and Sunnah. The Qur'an tells us that Prophets in the past had drawn lots to solve certain disagreements. In fact after migration from Mecca to Medina, Medinan Muslims drew lots to choose which Meccan emigrant they would host.¹⁰⁶

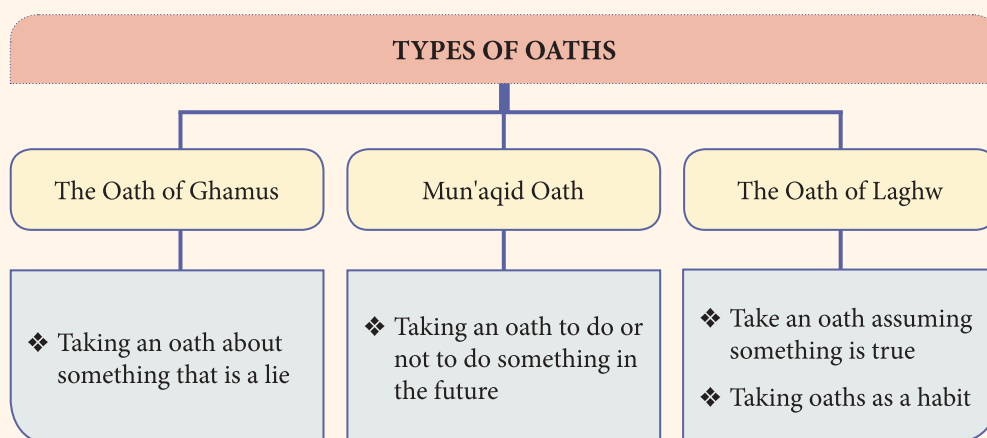
Drawing lots or flipping coins is a method still used when making a decision in many occasions today. For example, when distributing gifts, choosing among the applicants of pilgrimage, deciding the shares of inheritance among the heirs, lots are drawn in order to prevent discontentment among people.

H. OATH (YAMIN) AND VOW (NADHR)

I. Oath

Terminologically, yamin (oath) refers to a promise taken by the name of Allah in order to strengthen a decision taken to do or not to do something.

According to Shafii School, taking an oath is generally reprehensible and one should not take an oath unless it is necessary. Imam Shafii said, "I have never, neither for truthfully nor falsely, taken an oath by the name of Allah."



Types of Oaths

a. The Oath of Ghamus: It means taking knowingly a false oath or taking an oath against a promise regarding something related to past or present time. For example; a person who is supposed to pay a debt says "Wallahi (by Allah) I already paid my debt" while knowing that he hasn't.

This type of oath, i.e. taking a false oath knowingly, is lying and a major sin in Islam. Our Prophet (pbuh) said in this regard, "*The biggest sins are: To join others in worship with Allah; to be undutiful to one's parents; to kill somebody unlawfully; and to take an oath of Ghamus.*"¹⁰⁷

Because taking false oath will submerge a person into Hell, it is called ghamus which means submerge in Arabic. One needs to repent much and also pay atonement in order to purify himself from the sins of taking the oath of ghamus.

106 Al-Bukhari, Shahadat, 30, Manaqib al-Ansar, 46

107 Al-Bukhari, Ayman, 16

b. Mun'aqid Oath: Swearing to do or not to do a certain act, for example, "Wallahi, from now onwards, I will finish reading the whole of the Qur'an every year."

If one does not fulfill his promise or the subject of his oath, he needs to pay atonement.

If one takes an oath not to fulfill obligatory acts of worship like "Wallahi I will not perform my prayers," or to commit an unlawful act like "Wallahi I will drink alcohol," he must break this oath, repent, and then pay the atonement for taking such an oath. If the oath is not to do a permissible deed such as "Wallahi, I will not visit patients", he should break this oath, visit patients and pay expiation. In this regard, Allah's Messenger (pbuh) said, "*He who took an oath and then found another thing better than (this) should expiate for the oath (broken) by him and do (the better thing).*"¹⁰⁸

If the oath is taken to do an obligatory act of worship such as "Wallahi I will fast in the month of Ramadan," it is obligatory to fulfill the requirement of the oath. If the oath is about to do something permissible like "Wallahi I will take a journey", it is better to fulfill the subject of this oath. This is necessary as a manifestation of reverence to Allah Almighty. Allah Almighty said in this regard, "**And be true to your bond with Allah whenever you bind yourselves by a pledge, and do not break [your] oaths after having [freely] confirmed them and having called upon God to be witness to your good faith: behold, God knows all that you do.**"¹⁰⁹

c. The Oath of Laghw: It is the type of oath that one takes without an intention to take an oath. Such a person is neither responsible for such an oath nor is his oath valid. It is called "the oath of laghw" (invalid oath).

One is not also required to expiate for the oath of laghw. "**Allah will not call you to account for what is futile in your oaths...**"¹¹⁰

Expiation for Oath

Expiation for an oath can be paid in one of the following three ways:

- a) To emancipate a Muslim slave.
- b) To feed ten needy people: To feed ten needy people (two meals each) with food items usually consumed by the people of the region.
- c) To clothe ten needy people: To clothe ten needy people by clothes such as pants, shirts, etc.

One is free to choose any one of these options. If he is not able to do any one of them, he fasts for three days. It is not necessary to fast them consecutively.

Some Rulings Related to Taking an Oath

The person who takes an oath should be a sane and adult believer. He should not be forced to take the oath. He should take the oath intentionally and by the name of Allah. Accordingly, the oath taken by a person who is sleeping or unconscious due to a sickness is not valid. The oath of a person who is forced to take the oath or who takes the oath by mistake is not valid either. In like manner, an oath taken by the name of another being not by the names and attributes of Allah Almighty is not valid. None of the invalid oaths requires expiation.

If an oath is taken by the name of Allah, it should be interpreted according to the customs and language of the region. When one takes an oath saying "I will not eat from the fruits of this tree", only not eating from the fruits of that tree is understood. If a person takes an oath saying "I will not perform salah

108 Muslim, Ayman, 3

109 Al-Nahl, 16: 91.

110 Al-Maida, 5: 89.

(prayer),” he does not break his oath by performing funeral prayer. Because, customarily funeral prayer is not accepted as salah.

It becomes forbidden to break an oath taken to perform an obligatory act or not to commit a forbidden act.

On the contrary, it becomes obligatory to break an oath taken to commit a forbidden act or not to perform an obligatory act. One may pay the expiation of breaking such an oath before breaking it.

As for the case of taking an oath not to do a sunnah act or commit a reprehensible act, it becomes recommended to break that oath. For example, it is recommended to take the oath taken to eat by left hand.

If the number of oaths increases, the number of expiations should go up in the number of oaths.

II. Vow (Nadhr)

Nadhr in terminology means to make obligatory upon oneself to do a certain thing, or to refrain from doing something which has not been commanded in Islam. The person who makes a vow is obliged to fulfill it as it is a promise made to Allah. However, vowing to do something that is unlawful shall not be carried out, instead the expiation is paid.

Conditions of a vow are as follows:

There should be an act of worship same as the promised act. Such as promising to fast or sacrificing an animal etc.

- The promised act should be religiously possible to be performed. It is not valid to vow to do something which cannot be thought in Islam. For example, it is not valid to make a vow saying “I vow to fast at night for the sake of Allah.”
- The promised act should not already be an obligation on the person. For example, the votive act cannot be an obligatory act of worship like vowing to fast in the month of Ramadan.
- If one vows to give something for the sake of Allah, it should be in the ownership of the person who vows.



To vow a supererogatory act of worship like performing prayer, fasting, performing pilgrimage, or giving charity, visiting sick people, spreading good moral qualities like greeting people, are all valid and religiously binding examples of vows. They should be fulfilled. Because our beloved Prophet (pbuh) said in this regard, “Whoever vows that he will be obedient to Allah, should remain obedient to Him; and whoever made a vow that he will disobey Allah, should not disobey Him.”¹¹¹

Integral Parts of a Vow (Nadhr)

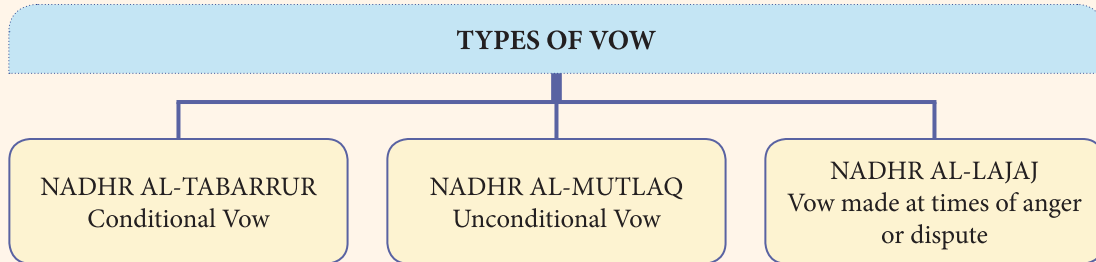
1- The one who vows should be a sane and adult Muslim and his vow should be validly made. Therefore, the vow of a disbeliever, insane, or child and the vow of a person who is forced is not valid.

2- The votive act cannot be an individually obligatory (fard ‘ayn) act of worship. For example, one may make a vow to perform two cycles of supererogatory prayer, one day supererogatory fasting, recite chapters from the Qur’an or to perform funeral prayer which is a collective obligation (fard kifai).

111 Al-Bukhari, Ayman wa al-Nuzur, 28

3- The tense of the statement of vow should express necessity. For example saying, “If Allah heals my sick friend, I am obliged to recite whole Qur’an be a nadhr upon me.” Only thinking about a vow and not mentioning it verbally is not enough for the bindingness of a vow.

Types of Vow



1- Nadhr al-Tabarrur (nadhr mujazat, nadhr mukafat): This is the type of vow made depending on a condition. When the event presented as a condition for the vow takes place, the vow must be fulfilled. For example, if one vows by saying “If I have a car, I will sacrifice a sheep”, he must sacrifice a sheep when he has a car. He cannot pay an expiation or do something else instead of sacrificing a sheep.

If one vows by saying, “If Allah heals my sick friend, I am obliged to do a nadhr”, it becomes obligatory upon him to perform anything considered an act of worship if the sick person regains his health. Not fulfilling the vow and paying an expiation of breaking an oath would not be enough.

2- Nadhr al-Mutlaq: If a vow is made without attaching it to a condition, it is called nadhr al-mutlaq or unconditional vow. The one who makes such a vow does not expect any material target in such a vow, but expects only spiritual rewards. For example, if one says “I am obliged to dig a water well in Africa for the sake of Allah” without a condition, he must fulfill this vow.

If someone vows to do something which is not an act of worship, for example “to eat something” or “to drink something” etc., but does the opposite of his vow, he must pay an expiation.

If one who makes an unconditional vow by saying “I am obliged to give charity” he must give anything of value as a charity. If one only says “I am obligated to perform prayer”, he must perform at least two cycles of supererogatory prayer or if he says “I am obligated to fast”, he must fast at least one day.

3- Nadhr al-Lajaj: This type of vow is the one made at times of anger and disputes. For example, if one says at the time of a dispute, “If I speak to Zayd, I am obliged to do such and such” then if he speaks to Zayd, he has a choice between doing what he has vowed, or else paying the expiation for a broken oath. Because his promise is in a way similar to a vow (nadhr) and in a way similar to an oath (yamin). Allah’s Messenger (pbuh) said in this regard, “*Expiation of a vow is (same as) the expiation of an oath.*”¹¹²

I. UQUBAT (WORLDLY PUNISHMENT AND SANCTIONS)

Islam has established laws and orders that must be obeyed and the sanctions established by the Qur’an and Sunnah or by the authorities of the Muslim state to punish those who fail to obey them is called **uqubat**.

Punishments that have been defined by the Qur’an or Sunnah are called **hadd** punishments. As for those defined by Islamic authority, they are called **ta’zir**.

112 Muslim, Nadhr, 5

I. **Hadd** punishments

There are five types of hadd punishments, which are the penalties for; committing adultery, theft, drinking alcohol, slandering an honorable woman, and banditry. These punishments can only be imposed on the guilty by the Islamic state or the authorities and not by the individuals.

a. **Punishment for Adultery (Zina):**

The punishment for extra-marital sexual relationship (a married adulterer and adulteress) is stoning to death (*rajm*), however for pre-marital fornicators, the punishment is flogging (a hundred strikes). The Qur'an informs us of the punishment for non-married adulterers and the Sunnah defines the punishment for married adulterers.

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلَيَشْهَدَ عَذَابُهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ

It is stated in the Qur'an, "The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment."¹¹³ The adultery mentioned in this ayah refers to the adultery of unmarried adulterers (pre-marital). We know from the Sunnah that Prophet Muhammad (pbuh) also exiled a male adulterer for a year.

Scholars of Islam unanimously agree that the punishment for extra-marital adulterers is stoning to death, the ruling for this punishment is determined by very well-known sayings of the Prophet (which almost reached the degree of mutawatir) and ijma' (consensus). During the time of the Prophet, there were a few cases of punishment practiced for the act of adultery of a married man and woman. The Prophet (pbuh) said, "The killing of a Muslim is prohibited other than in these three circumstances: Retaliation for murder, extra-marital intercourse and apostasy."¹¹⁴

The Prophet ordered the stoning of a woman who admitted that she had illegal intercourse. In another occasion, the Prophet told his Companion Unays: "O Unays, go to that woman, if she admits to adultery, stone her."¹¹⁵



A woman who got pregnant after committing adultery was punished after the birth of her child, as she would constantly admit her crime to the Prophet. This woman surrendered herself with submission to the punishment decreed by the Prophet for her sin. After leading her funeral prayer, Prophet Muhammad said, "She has made such a repentance that if it were divided among seventy men of Medina, it would be enough. Have you found any repentance greater than sacrificing one's life for Allah Almighty."¹¹⁶

Adultery is a major sin. However, in order to apply the punishment of adultery, it should be proven by admission of the adulterer himself/herself or

113 Al-Nur, 24: 2.

114 Al-Bukhari, Diyat, 6; Muslim, Qasama, 25, 26; Abu Dawud, Hudud, 1.

115 Al-Bukhari, Sulh, 5.

116 Muslim, Hudud, 28; Ibn Maja, Diyat, 36.

by four legally upright male witnesses. The four witnesses should not only be legally upright but also personally witness the act of adultery. This is why it is very difficult to apply the punishment of adultery. However, by this ruling, Islam has prevented the spread of openly committing adultery in the Muslim world and ensured the peace and tranquility of Muslim society.

b. Slander (Kadhf):

Slandering or false accusation of a chaste woman by expressing that she has committed adultery - although this is not true - is a major sin in Islam. The Prophet (pbuh) warned, *“Avoid the seven noxious sins: associating partners with Allah (shirk), magic, unjust murder, consuming interest, consuming the wealth of an orphan, fleeing from Jihad and slandering chaste women.”*¹¹⁷

The punishment for slander is mentioned in the Qur’an, **“And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient, except for those who repent thereafter and reform, for indeed, Allah is Forgiving and Merciful.”**¹¹⁸

c. Punishment for theft:

The punishment for stealing something worth more than one quarter of a dinar (about one gram of gold) which belongs to somebody else has been highlighted in the Qur’an, **“[As for] the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise.”**¹¹⁹ The Prophet (pbuh) said, *“Those who were before you were destroyed because of this reason: When a noble person stole anything they would not punish him, however when a weak person stole something they would punish him.”*¹²⁰

In theft, the testimony of two legally upright witnesses is enough. The thief must give the stolen good back. If the stolen good is destroyed, the thief must compensate it.

The hand of child, insane, and forced person is not cut as a punishment for theft.¹²¹ Caliph Umar (r.a.), during times of famine and poverty, suspended the hadd of theft as people were stealing food to eat. As asserted by the Prophet Muhammad (pbuh), *“Avoid the hudud (punishments) in doubtful cases.”*¹²²

d. Punishment for Banditry:

Banditry and rebellion against state is the crime of stopping people (mostly with weapons) to take their money and kill or rape them. It is a major sin in Islam. Allah Almighty says in the Qur’an, **“Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment.”**¹²³

Muslim scholars unanimously agree that bandits who kill people are to be penalized with the **hadd** punishment. This punishment cannot be alleviated nor dropped, even if the family of the murdered victim has forgiven the murderer, or even if he returns what he has stolen.

117 Al-Bukhari, Wasaya, 23; Muslim, Iman, 38; Abu Dawud, Wasaya, 10.

118 Al-Nur, 24: 5.

119 Al-Maida, 5: 38.

120 Al-Shawkani, ibid, VII, 131, 136

121 Al-Nawawi, Minhaj, p. 1065

122 Abu Dawud, Salat, 14; Al-Tirmidhi, Hudud, 2

123 Al-Maida, 5: 33.

If a group rebels against the Muslim state, the head of the state sends a trustworthy and smart person to advise them. If the rebels say that they are oppressed and have doubts about the administration, the oppression and their doubts should be removed. If they insist on rebellion, the head of the state advises them and informs them that he will open war to them. The head of the state does not kill those who flee from battle field, wounded and captured ones.

If the rebel or bandit usurps the people's property, he is punished by cutting his right hand and left foot as a punishment. If he commits the same crime again, his left hand and right foot are cut. If he kills a person during his crime, it becomes obligatory to kill him in retaliation. If there are many people helping the rebels and bandits, they are punished as a ta'zir by imprisonment, exile, or any other punishment.¹²⁴

INFORMATION BOX

Drinking intoxicating beverages has been prohibited by both the Qur'an and Sunnah. The verses that firmly assert its prohibition are as follows, "O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful. Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?" (Al-Maida, 5: 90, 91; See other verses Al-Bakara, 2: 219; al-Nisa, 4: 43; al-Araf, 7: 157; al-Nahl, 16: 67)

e. Punishment for Drinking Alcohol:

Whatever intoxicates in large quantities, a little of it is also prohibited. Even if only a little amount of alcohol has been consumed, and the drinker has not become drunk, the hadd punishment is applied. The proof in this regard is the following saying of our Prophet (pbuh), "Every intoxicant is *khamr* and all *khamr* is forbidden (*haram*)."¹²⁵ There is no punishment for those who drink alcohol without knowing that it was alcohol, for those who are forced to drink, for children and for the insane.

The crime of drinking alcohol is proven by the admission of the person who drinks it or by two legally upright male witnesses. The person who is caught intoxicated and whose crime is proven by two witnesses is punished by hadd. Because Allah's Messenger (pbuh) said in this regard, "Flog the one who drinks wine."¹²⁶

Abu Hurayra (r.a.) explained what happened to a drunk man brought to Allah's Messenger (pbuh), "Some of us started to beat him with our hands, and some with their garments, and when we finished, someone said to him, "May Allah disgrace you!" On that the Prophet said, "Do not say so, for you are helping Satan to overpower him."¹²⁷

Punishment of drinking wine or other intoxicants is forty lashes according to Shafii School, while according to other Schools it is eighty lashes. According to Shafii School, the head of the Muslim state may increase the number of lashes.¹²⁸ The basis of this punishment is the following saying attributed to Ali (r.a.) "When a person drinks alcohol, he may get drunk, and when he gets drunk, he behaves and speaks unconsciously and this may lead him to slander others. And the punishment for slander is eighty lashes."¹²⁹

The punishment is applied after the person gets sober not when he is still intoxicated.

124 Al-Nawawi, Minhaj, p. 1069

125 Muslim, Ashriba, 73; Abu Dawud, Ashriba, 5

126 Abu Dawud, Hudud, 36; al-Tirmidhi, Hudud 15; al-Nasai, Ashriba, 42

127 Al-Bukhari, Hudud, 4; Muslim, Hudud 35; Abu Dawud, 35, 36; al-Tirmidhi, Hudud, 14, 15

128 Al-Nawawi, Minhaj, p. 1074

129 Al-Shawkani, Nayl al-Awtar, VII, 144; al-Zaylai, Nasb al-Raya, III, 351

f. The Punishment for Apostasy:

The term “irtidad” means to say or do something that leads a believer to apostasy.

Allah says in the Qur’an, **“And whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever - for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire, they will abide therein eternally.”**¹³⁰

Majority of Mujtahids are in agreement that the penalty for apostasy is death. They present the following ahadith as the basis of their view, *“Kill the one who leaves his religion”*¹³¹ *“The blood of a Muslim cannot be shed except in three cases: Retaliation (Qisas) for murder, extra-marital intercourse (adultery) and the one who turns renegade from Islam (apostate).”*¹³²

The apostasy of a person forced to apostate, or a child’s or an insane person’s apostasy is not valid and punishable. It is obligatory to offer to the man or woman who converts out of Islam (murtad) to convert back to Islam. If the person who converts out of Islam requests time to think about, he is given three days. If he insists on apostasy, he will be executed. If he converts back to Islam, his conversion will be accepted and he will be set free.

Even though the ruling regarding the punishment for apostasy is mentioned in traditional sources in this manner, some modern Muslim scholars argue that the approach to apostasy during the time of the Prophet Muhammad and his Companions was so because apostasy at that time had political as well as ideological effects. In those days, the apostate would leave Islam and take part in mischief to destroy and harm the Muslim nation, therefore he would be punished by death. However, one who converts out of Islam today has no political agenda or threat to Islam, and because of that, he needs to be set free and shall not be punished.

II. Punishment for Injuries and Murder (Qisas and Diyyah)

a. Qisas Punishment (Equal retaliation):

Qisas is applied for purposefully killing or injuring somebody. The punishment in the form of retaliation for such crimes (eye for an eye) is mentioned in the Qur’an and Sunnah. The following is a verse from the Qur’an, **“O you who have believed, prescribed for you is legal retribution for those murdered - the free for the free, the slave for the slave, and the female for the female. But whoever overlooks from his brother anything, then there should be a suitable follow-up and payment to him with good conduct. This is alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment. And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous.”**¹³³

According to Islamic law, the actions that take a life are examined under there categories,

a- Intentional murder. This is the type of murder intentionally committed by an instrument which usually kills a person such as firearms, knives, arrows etc.

b- Quasi-intentional killing. Killing by an instrument which usually do not kill a person like a stick or whip.

c- Killing by mistake. Killing a person unintentionally like in a car crash

Retaliation is applicable only in intentional type of murders. One who leads to intentional killing of another person is also punished by retaliation.

130 Al-Baqara, 2: 217.

131 Al-Bukhari, Jihad 149, I’tisam, 28, Istitaba, 2; Abu Dawud, Hudud 1.

132 Al-Bukhari, Diyat, 6; Muslim, Qasama, 25, 26; Abu Dawud, Hudud, 1

133 Al-Baqara, 2: 178-179.

If A is forced to kill B and if A kills B, the one who forces A is punished by retaliation. If a group of people kills a person, the whole group is punished by retaliation.

Retaliation is applied when there is a purely intentional injury against limbs. Retaliation becomes obligatory in injuries of cutting a limb from the joint, putting an eye out, cutting ear, nose or tongue.¹³⁴

Retaliation can be applied only by the permission of the head of the state or the permission of the authorities of the state.

b. Diyyah (blood money):

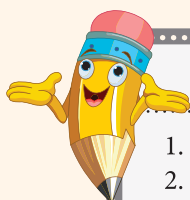
Diyyah is financial compensation given to the family or heirs of a murdered victim. This monetary compensation is paid by the perpetrator and his/her close male relatives (called aqilah).

The compensation for hurting, injuring, disabling or paralyzing a victim is called *arsh*. The term of diyyah is sometimes used instead of arsh. For instance the diyyah of injuring hand.

In the case of injury or paralysis, the victim may request the application of qisas. However, when a person is killed, his heirs and the state are entitled to choose between qisas and diyyah. In principle, the heirs of the murdered victim have the rights related to diyyah or qisas. Because the heirs are the closest people to the victim.

The amount of diyyah for a Muslim male killed without a justifying reason is hundred camels or the value of hundred camels if there is no camel to be given as compensation. The diyyah amount for woman is half of this amount.

Some of the amounts of arsh which is the diyyah in injuries have been determined by the sayings of the Prophet (pbuh). For example, cutting off somebody's hand requires paying half of the full diyyah mentioned above, the arsh amount for every finger is one tenth of the full diyyah. In principle, for the limbs that exist only one in the body, the arsh amount is accepted as full diyyah, while for the limbs which exist two in a body, the arsh amount for each one of them is the half of full diyyah. For the limbs which exist four of them in a body, the arsh amount for each one of them is one quarter of the full diyyah. The diyyah amount for the wounds given to the head or face which reach to the skull is five camels. The diyyah amounts for injuries that are not mentioned in the textual sources of Islam (i.e. the Qur'an and Sunnah), the judge decides the punishment. The ruling of diyyah declared by the authority is called ***hukumat al-'adl***. For the injuries to the face and head which do not reach the skull, hukumat al-'adl is applied.



EVALUATION ACTIVITIES

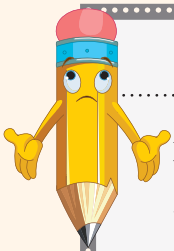
1. What are the general principles in Islam in regards to halal and haram?
2. What are the foods which are unlawful?
3. What is hunting? The hunting of which animals is lawful?
4. Research the correct measures in slaughtering an animal.
5. What is the minimum requirement of cover (clothing) for a woman?
6. What does khalwa sahiha mean? How does it take place?
7. What is the wisdom behind the prohibition of gold and silk for men?
8. What are the rulings associated with perfumes and fragrances.
9. How does imitating the opposite gender occur, and in which situations does this happen? Make a list of them.
10. What are the characteristics of the animals whose meat is haram?
11. Describe the types of yamin (oaths).
12. Give examples of cases where qisas or diyyah are applied.

134 Al-Nawawi, Minhaj, p. 966-975



MATCH THE PAIRS

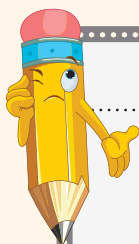
1	Israf		<i>Parts of the body that must be covered</i>
2	'Awhrah		<i>Taking an oath by the name of Allah</i>
3	Jilbab	1	<i>Spending extravagantly</i>
4	Ta'zir		<i>Making something obligatory upon oneself</i>
5	Nadhr		<i>A woman's outer garment</i>
6	Yamin		<i>Punishments determined by the Muslim authorities</i>



TRUE-FALSE QUESTIONS

1. () The steps leading to something haram are also haram
2. () Sexual pictures, if used for art purposes, are not haram
3. () Deeds are based on the intention. So it is fine to steal money to build a masjid.
4. () It is permissible to eat the meat of donkey.
5. () It is permitted to drink alcohol in little amounts
6. () If the hunter forgets to say Basmala during hunting, he may say it before he eats the cooked meat.
7. () If a game falls into a trap or net and dies before properly being slaughtered, its meat becomes unlawful to eat.
8. () It is unlawful to touch the 'awrah of an unmarriageable relative but it is permissible to look at it.
9. () A woman may expose her ornaments in the presence of a kid.
10. () A prayer performed in transparent covering all parts of 'awrah areas is valid.
11. () There is no harm to wear the clothes made from the skins of wild animals.
12. () After ten years of age, a child may not sleep in the same bed with the same gender.
13. () Islam does not allow applying eyeliner.
14. () A woman is allowed to dye her hair any color





MULTIPLE CHOICE QUESTIONS-1

1. Which of the following is not true?
 - A) Necessity legitimizes the unlawful.
 - B) What is unlawful is haram everywhere.
 - C) Good intention legitimizes the unlawful.
 - D) Anything not prohibited is permissible.
2. Which of the following can be eaten by a Muslim?
 - A) Those slaughtered by a some being's name other than Allah
 - B) Carrion
 - C) Animals slaughtered by the people of the Book
 - D) Pig meat
3. There are some prohibitions regarding alcohol. Which of the following is not one of them?
 - A) Every intoxicant is haram
 - B) It is not permitted to be present in a place where alcohol is served
 - C) Even a little is haram of that thing which a lot of it causes intoxication
 - D) It is haram to use anything that contains alcohol
4. Which approach to hunting is not appropriate?
 - A) Hunting for sport
 - B) Hunting with a sharp weapon
 - C) Hunting for food
 - D) Hunting with a trained dog
5. Which one is not included in 'awrah according to Shafii School?
 - A) Man's knee
 - B) Man's thigh
 - C) Woman's hair
 - D) Woman's calf
6. In terms of Islamic law, which of the following can a woman do?
 - A) Walking coquettishly
 - B) Wearing high-heel shoes
 - C) Asking men questions
 - D) Wearing clothes revealing her body
7. Which one of the following a Muslim man can use?
 - A) Gold ring
 - B) Silk clothes
 - C) Silver ornament
 - D) Hashama style swim suits
8. What can a Muslim woman do to beautify herself for her husband?
 - A) Pluck her eyebrows.
 - B) Apply kohl.
 - C) Make Tattoos
 - D) Wear a wig

**MULTIPLE CHOICE QUESTIONS-2**

9. Which of the following is wrong information about grooming the hair and beard?
- A) It is not permissible to trim the end of the beard.
 - B) It is Sunnah to grow the beard and shorten the mustache.
 - C) A woman cannot shave her head like a man's.
 - D) A woman may dye her hair in a different color than its natural color
10. Where is it not permissible to act with music?
- A) At war
 - B) On a journey
 - C) Wedding
 - D) Graduation party
11. Which oath does not require atonement when violated?
- A) The oath of Ghamus
 - B) The oath of Laghw
 - C) Mun'aqid Oath
 - D) The oath made by the name of Allah
12. What is the term used for the punishment of a person who does not obey Islam's principles and laws?
- A) Hadd punishments
 - B) Uqubat
 - C) Ta'zir punishments
 - D) Qisas punishment
13. Which of the following do not require hadd punishment?
- A) Adultery
 - B) Drinking alcohol
 - C) Gambling
 - D) Slandering a chaste woman

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ANSWERS KEYS



CHAPTER 1

MATCH THE PAIRS

Answers (In order): 5, 6, 2, 1, 3, 4

MULTIPLE CHOICE QUESTIONS

Answers: 1-D, 2-C, 3-B, 4-B, 5-C



CHAPTER 2

MATCH THE PAIRS

Answers (In order): 5, 6, 1, 2, 4, 3

TRUE - FALSE QUESTIONS

Answers: 1-F, 2-T, 3-T

FILL IN THE SPACE QUESTIONS

Answers: 1-'urf, 2- Views of the sahaba, 3- sadd al-dharai, 4-istishab, 5-maslahah

WRITE IN THE SECTION ON THE SIDE

Answers (Down): 1-Istihsan 2-Qiyas 3-Urf 4-Istishab 5-Maslahah 6-Sunnah 7-Istishab
8-Istihsan 9-Sadd al-Dharai 10-Shar'u man qablana 11-Istishab 12-Ijma

MULTIPLE CHOICE QUESTIONS

Answers: 1-B, 2-A, 3-C, 4-B, 5-C, 6-D,



CHAPTER 3

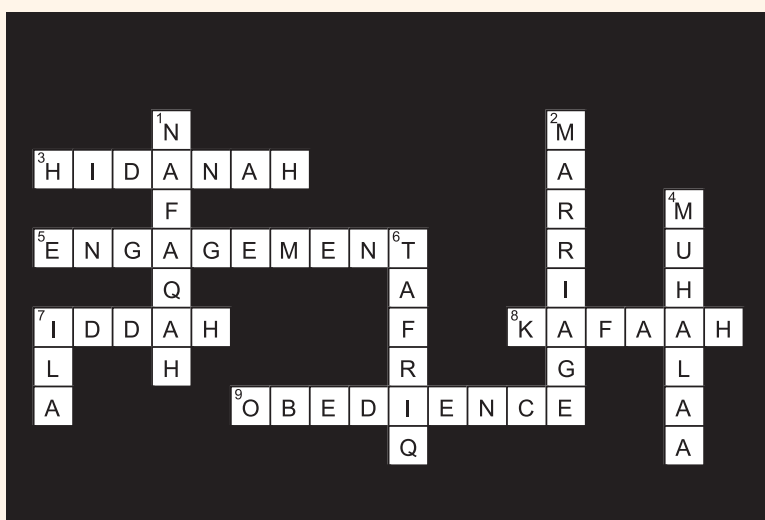
MATCH THE PAIRS

Answers (In Order): 4, 5, 1, 3, 2

TRUE - FALSE QUESTIONS

Answers: 1-T, 2-F, 3-T, 4-T, 5-F, 6-F, 7-F, 8-T, 9-F, 10-T, 11-T, 12-F, 13-T, 14-F, 15-T

CROSSWORDS



MULTIPLE CHOICE QUESTIONS

Answers: 1-B, 2-D, 3-C, 4-D, 5-B, 6-D, 7-C, 8-D, 9-B, 10-A, 11-B



CHAPTER 4

MATCH THE PAIRS

Answers (by order): 4, 6, 5, 3, 1, 2

TRUE - FALSE QUESTIONS

Answers: 1-T, 2-F, 3-T, 4-T, 5-F, 6-T, 7-T, 8-F, 9-T, 10-T, 11-F, 12-T

FILL IN THE SPACE QUESTIONS

Answers: 1- **haram**, 2- **children, wealth**, 3- **Profiteering**, 4- **taqwa, aggression**,
5- **intoxicants, gambling**, 6- **riba al-nasia**, 7- **najash sale**, 8- **talaqqi al-rukban**,
9- **fasit condition**, 10- **grass, fire**

WRITE IN THE SECTION ON THE SIDE

Answers (Down): 1-Unlawful, 2-Unlawful, 3-Unlawful,
4-Unlawful, 5-Lawful, 6-Lawful, 7-Lawful

MULTIPLE CHOICE QUESTIONS

Answers: 1-B, 2-D, 3-B, 4-B, 5-C



CHAPTER 5

MATCH THE PAIRS

Answers (In Order): 2, 6, 1, 5, 3, 4

TRUE - FALSE QUESTIONS

Answers: 1-T, 2-F, 3-F, 4-F, 5-F, 6-T, 7-T, 8-F, 9-T, 10-F, 11-F, 12-T, 13-F, 14-T

MULTIPLE CHOICE QUESTIONS

Answers: 1-C, 2-C, 3-D, 4-A, 5-A, 6-C, 7-D, 8-B, 9-A, 10-D, 11-B, 12-B, 13-C

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